Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1997

JOHN Z. DELOREAN;
ECCLESIASTES 9:10-11-12, INC.,
formerly known as LOGAN MANUFACTURING,
a Delaware Corporation,

Petitioners,

v.

MORGANROTH & MORGANROTH,
a Michigan General Partnership;
MAYER MORGANROTH,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

with Appendix

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418 P

QUESTIONS PRESENTED

1. Whether a lawyer lacked standing to sue his client in civil RICO on a fee claim where the lawyer had represented the client in the predicate acts alleged or in matters related to those predicate acts, and the lawyer therefore could not show any proximately caused injury.

2. Whether a lawyer lacked standing to sue his client in civil RICO on a fee claim where the lawyer had represented the client in the predicate acts alleged or in matters related to those predicate acts, because the lawyer, functionally, was in pari delicto with the client and was outside the class of persons civil RICO was meant to benefit.

3. Whether having to defend a jury action upon an attorney's baseless federal civil RICO action brought with a pendent fee claim resulted in prejudice warranting reversal, even where the attorney failed on the RICO action but prevailed on the fee claim.

PARTIES TO THE PROCEEDING

John Z. DeLorean and Ecclesiastes 9:10-11-12, Inc. f.k.a. Logan Manufacturing, Petitioners and Defendants-Appellants below, are, respectively, an individual who is a resident of New Jersey, and a Delaware Corporation.

Morganroth and Morganroth and Mayer Morganroth, Respondents and Plaintiffs-Appellees below, are, respectively, a Michigan partnership and an individual who is a resident of Michigan.

Pursuant to Rule 29.6 of the Rules of this Court, Petitioner Ecclesiastes 9:10-11-12, Inc., a Delaware corporation, states that it is wholly owned by parent corporation Cristina Corporation, a Nevada corporation. John Z. DeLorean is the registered owner of all the shares in Cristina Corporation. Ecclesiastes 9:10-11-12, Inc. has no subsidiaries.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit that gives rise to this petition was entered on August 14, 1997, and is published by order of that court (Appendix A). The order denying reconsideration was entered on October 14, 1997 (Appendix B).

JURISDICTION

The statutory provision for this Court's jurisdiction is 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The statutes involved are the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961-1968, and in particular, 18 U.S.C. § 1964(c), the private right of action for treble damages available to "[a]ny person injured in his business or property by reason of a violation of section 1962" of the Act, known as "civil RICO." The statutes are reprinted in Appendix L.

STATEMENT OF THE CASE

A. The Proceedings Below; Jurisdiction

Plaintiffs Mayer Morganroth and his law partnership Morganroth & Morganroth ("Morganroth") invoked federal jurisdiction in the district court by virtue of diversity and civil RICO. 28 U.S.C. §§ 1331, 1332; 18 U.S.C. § 1964(c). Jurisdiction was invoked in the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1291.

On February 2, 1993, John Z. DeLorean filed a malpractice action against Morganroth in New York state court. On February 25, 1993, Morganroth filed the subject action in district court for the Eastern District of Michigan in civil RICO, for attorneys fees under express and implied contract theories, unjust enrichment and fraud (Appendix C). The New York state action was dismissed as time-barred. The Michigan federal action proceeded.

On May 6, 1993, DeLorean filed a motion to dismiss the complaint's RICO count (Appendix D). On December 22, 1993, DeLorean filed a motion for partial summary judgment against the RICO claim, a motion for separate trial as to the RICO claim, and a motion for judgment on the pleadings as to the RICO claim (Appendix E, F, G, H). The district court denied all said motions.

DeLorean admitted an express contract to hire Morganroth. The case went to trial before a jury for over 50 days, from September 8, 1994 until January 4, 1995. At the close of plaintiff's case, DeLorean moved for a directed verdict as to several Morganroth claims including the RICO (Appendix I). The court overruled this motion. On February 10, 1995, DeLorean filed a motion for new trial based on, among others, error in allowing the RICO claim to go to the jury (Appendix K), which the court also denied.

The jury found for DeLorean on the RICO count, but nevertheless, awarded Morganroth $4.7 million for

attorneys fees, $600,000 for "lost business" and $5 million in punitive damages (Appendix J). The trial court struck out the $5 million in punitive damages as contrary to Michigan law.

B. Statement Of Facts Material To The Issues

In April 1983, Detroit area lawyer Mayer Morganroth met John Z. DeLorean, who retained Morganroth to represent him and his corporation, Logan Manufacturing, in various matters. Over the period of 1983-1993, Morganroth, in addition to other lawyers, represented DeLorean in numerous matters, including the defense of RICO claims, DeLorean as a RICO plaintiff in the case of DeLorean v. Cork Gully, 118 B.R. 932 (E.D. Mich., 1990), bankruptcy proceedings following the DeLorean Motorcar United Kingdom litigation, his divorce from Cristina Thomopolus, attorney fee litigation with former lawyers, including counterclaims against Simon and Garratt alleging malpractice, and many other matters including various creditors' actions.

Over the ten years he represented DeLorean, Morganroth was paid over $800,000 but by 1990 claimed he was owed $5 million more. Morganroth, however, had no time records nor periodic statements to sustain his fee demands, having intentionally destroyed them to prevent their discovery. To overcome this dilemma, Morganroth resorted to civil RICO in a suit for fees, forcing his own client to defend the following alleged predicate acts:

1. "Weitzman Scheme" (failure to pay lawyer 1982-1991) Morganroth co-counseled with Weitzman in defense of a government fraud case, then represented DeLorean in a fraudulent conveyance action filed in the bankruptcy court in which Weitzman was a co-defendant.
2. "Simon Scheme" (failure to pay lawyer in 1982-1983) Morganroth represented DeLorean in fee litigation and filed counterclaim for malpractice.
3. "Garratt Scheme" (failure to pay lawyer) Morganroth represented DeLorean in fee litigation and filed counterclaim for malpractice.
4. "Kimmerly Scheme" (failure to pay lawyer 1979-1992 with no claim or litigation filed) Morganroth co-counseled matters with Kimmerly.
5. "Weinberg & Graubard Mollen Scheme" (failure to pay lawyers 1988-1993) Morganroth co-counseled on New York City eviction and DSQ enforcement actions while Morganroth represented DeLorean in DMC bankruptcy.
6. "McConnell Scheme" (failure to pay lawyer with no claim or litigation filed) Morganroth succeeded McConnell who in 1983-1984 handled DeLorean's bankruptcy work.
7. "DRLP Scheme" (defrauding business associates in 1979) claim was transferred to multi-district litigation in which Morganroth represented DeLorean.

8. "DMCL Scheme" (defrauding business associates of funds in 1979) resulted in DSQ action in DMC bankruptcy where Morganroth represented DeLorean from 1985 to 1990.

9. "Eureka Federal S&L Scheme" (stock fraud deal in 1982) Morganroth represented DeLorean thereafter in suit concerning this scheme by unsecured creditors' committee.

10. "Creditors' Scheme" (sale of Logan to strawman in 1984) Morganroth thereafter represented Logan and DeLorean.

11. "DeLorean Stole From Logan 1982-1989" - Morganroth represented Logan and DeLorean during that period.

12. "Altered Prenuptial Agreement in Cristina Thomopolus Divorce" - Morganroth represented DeLorean in the divorce.

13. "DeLorean Associated With Convicted Thief Roy Nesseth" - Morganroth represented DeLorean during all the years of this association.

Morganroth represented and never withdrew from representing DeLorean in, during and after the foregoing alleged predicate acts, for 10 years, 1983-1993, while all these others were allegedly being defrauded and left unpaid.

When the court inquired of Morganroth in a February 28, 1994 pretrial hearing to set forth the RICO predicate acts and "enterprise," he referred to virtually

every legal problem and every business associate DeLorean had had since the 1970's, arguing he should be able to attempt to link them to his fee claims. Morganroth called upon his defenses of DeLorean in RICO litigation, arguing against dismissal of his RICO case because other federal judges had sustained similar RICO allegations against DeLorean (but none by a former lawyer and none that went to judgment):

> "...the particular matters that're encompassed in our complaint have all been previous RICOs brought against John DeLorean which have been upheld as proper complaints."
>
> "One was in front of Judge Julian Cook who upheld the complaint ... as being a RICO, and denied motions to dismiss. Two were in front of Judge Woods where he denied motions to dismiss."
>
> "...all these schemes have been part of RICO complaints before, which Mr. DeLorean settled after the courts had denied motions to dismiss and went through considerable discovery on, including Howard versus Benjamin case, which encompassed many of these schemes."

In a later hearing on DeLorean's motions for summary judgment and to sever the RICO count, Morganroth described his claim as "...a direct action I

have for wrongs done to me, torts done to me, frauds done to me over a long period of time ..."by his client:

> "You see, what DeLorean intended to do someday is to dodge the bullet today and then tell his children, just give me the deed back and cancel the mortgage out. That's what he's done before, and he's been shown to do it a number of other times before in other courts."
>
> "The problem is that Mr. DeLorean finds ways in order to contradict whatever the court may do."
>
> "Mr. DeLorean will find any way possible to avoid his responsibility. Remember, Your Honor, this is not something new. This has gone on for some 7 judges who have given injunctions against him, ..."
>
> "It has been an experience that Mr. DeLorean has gone through and be responsible for, now for some 12 to 15 years that we know of. It has been repeatedly done and repeatedly, in order to avoid obligations."
>
> "Now his isn't -- that's of course, the crux of the RICO action that we have, too, that he took one lawyer after the other the same way. He would promise them the

money, and the day he was to pay them he would either sue them or transfer the asset."

"There have been numerous, numerous infractions by Mr. DeLorean of any court order. He just doesn't abide by court orders. He just doesn't care. He just has one thing in his mind and that's John DeLorean. He's done it from state after state."

Morganroth's opening statement was devoted almost entirely to RICO, describing DeLorean's "laundering" of money, "cocaine" dealings with "organized crime" and that he would "create documents." Over 50 days of trial that followed, Morganroth's evidence included testimony by DeLorean's attorney, Thomas Kimmerly, that DeLorean owed him $3 million; testimony from ex-wife Cristina Thomopolus that DeLorean would alter, hide and forge documents, and inflammatory statements DeLorean made in the supposed privacy of their home; testimony by DeLorean attorney Howard Weitzman that DeLorean owed him and his firm $2 million; exhibits purporting to establish DeLorean's links to organized crime and other allegedly wrongful activities; evidence that DeLorean fraudulently stated he had cancelled the Logan retirement plan; and Morganroth's own voluminous testimony and argument about alleged RICO activities of DeLorean.

Morganroth called DeLorean's former wife, Cristina Thomopolus, who testified that DeLorean presented an altered prenuptial document in their "very bitter ... nasty divorce," where Morganroth represented DeLorean and maintained then that she was "not credible." Now, in his RICO action, Morganroth calls the ex-wife to testify that this prenuptial agreement was "re-created" by his client. She further testified over objection that she saw "...John DeLorean practicing signing other people's signatures on documents" "in the living room" and "the bedroom" of their "home," even particular names like "Colin Chapman," and that she saw "...Mr. DeLorean use a particular lamp in order to try to age documents," also "in the living room [of their home]." She testified to having seen "...Mr. DeLorean handle documents with rubber gloves," and that "...he was steaming open an envelope one time" while wearing them. She also testified that DeLorean had said about Hillel Levin: "Wouldn't it be interesting if he was caught with some cocaine and he got set up just like I got set up."

Morganroth admitted he had never sent a "complete" bill until letters sent in December 1990, eight years into representing DeLorean and Logan, wherein he maintained he had worked 19,684 hours and was now owed $5 million in fees for the six years of 1985-1990. When it was pointed out that this represented a lawyer working nine billable hours a day, for seven days a week over each of the 52 weeks of the year, or every day of

the lawyer's life for six full years, Morganroth admitted that 19,000 hours was "an estimate." He also conceded that his bills contained numerous errors, including a million dollar multiplication error, $400,000 for the lost Cork Gully RICO suit (undertaken on a contingent fee basis), $11,000 in Rule 11 sanctions that the Court had expressly ordered levied only against Morganroth, payments and credits that were not correctly accounted for, and thousands of dollars in claimed expenses that he could neither document nor recall.

At the close of Morganroth's case in chief, DeLorean moved for judgment on the RICO claim pointing out, as in all prior motions, that Morganroth failed to prove the requirements of a civil RICO. The court denied the motion, stating:

> "I am not about to grant a directed verdict now after having sat through 3 months of trial. We can get a jury verdict on everything ....so then you could move to set it aside if you want ...."

The RICO claim dominated the jury instructions: Of the 158 given, 71 addressed RICO. The damage was done: The jury returned verdicts of $4.7 million compensatory damages, $5 million in punitive damages, and $600,000 for "lost business," with DeLorean responsible for the entire $10.3 million.

ARGUMENT

I. Petitioners' Legal Theory

§ 1964(c) of Title 18 of the Racketeer Influenced and Corrupt Organizations Act (RICO) provides for a civil claim:

> "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorneys' fee."

A civil RICO plaintiff must allege: (1) A violation of § 1962, (2) injury to business or property, and (3) that the injury was caused by the violation. Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 23 (2d Cir., 1990); Grantham and Mann v. American Safety Products, 831 F.2d 596 (6th Cir., 1987). He further must allege a cognizable injury under RICO, and "has standing if, and can only recover to the extent, that he has been injured in his business or property by the conduct constituting the violation." Sedima, S.P.R.L.v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985).

Predicate acts under civil RICO must be related and amount to or threaten continual criminal activity. A RICO plaintiff therefore further must allege and prove continuity over a close period by showing a series of related predicates. H.J., Inc. v. Northwestern Bell Tel.

Co., 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); Vild v. Visconsi, 956 F.2d 560 (6th Cir., 1992).

A plaintiff must also allege that a defendant's RICO violation proximately caused his injury. See Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268, 112 S.Ct. 1311, 1317, 117 L.Ed.2d 532 (1992). The Second Circuit has described a RICO violation as proximately causing the injury if it was a "substantial factor in the sequence of responsible causation, and if the injury is reasonably foreseeable or anticipated as a natural consequence." Hecht, 897 F.2d at 23-24.

Civil RICO standing is a jurisdictional requirement which remains open to review at all stages of litigation. National Organization for Women, Inc. v. Scheidler, 510 U.S. 249, 114 S.Ct. 798, 127 L.Ed.2d 99 (1994).

Morganroth lacked standing to bring a civil RICO action against DeLorean. Morganroth's claims also lacked relatedness and continuity in the RICO predicate acts and further lacked RICO injury. The district court should have dismissed the RICO claim. DeLorean was materially prejudiced, particularly by having had to defend a civil RICO claim over a year and a half of extensive pretrial proceedings and then in 50 days of jury trial. This was an attorney's fee claim litigation. It was not harmless error to allow the RICO claim to go to the jury. Sedima, supra; LeoGrande v. LeoGrande, 799 F.Supp. 1354 (E.D.N.Y.,1992). By its very nature, a RICO "racketeering" claim carries a tremendous danger of

creating guilt by association and prejudice which can spill over to other claims. U.S. v. Bledsoe, 674 F.2d 647, 664 (8th Cir., 1982). This Court has long warned against the dangers of the inflammatory evidence attending claims like civil RICO:

> The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. Michelson v. United States (1948), 335 U.S. 469, 475-476.

Morganroth used RICO to get a jury award against his clients based on passion and prejudice, where he lacked evidence for an attorney fees claim. Given the overwhelming quantity and vicious, prejudicial quality of the RICO evidence presented over 50 days of trial, it is impossible to believe that the jury was not unfairly swayed by it. The RICO evidence confused and diverted the issues, focusing on an "evil Mr. DeLorean" rather than the lack of Morganroth's attorneys fee records. Schrand v. Federal Pacific Elec. Co., 851 F.2d 152, 156 (6th Cir., 1988). This inflammatory presentation was not "harmless" error. It adversely affected DeLorean's "substantial rights" and directly affected the verdicts. 28 U.S.C. § 2111; FRCP 61. A new trial should have been

ordered. Farber v. Massillon Board of Education, 917 F.2d 1391, 1395 (6th Cir., 1990).

Morganroth strung together as predicate acts virtually every wrongful act that had been alleged against DeLorean, some dating back 15 years to 1979, and many from 10 years earlier. Morganroth represented DeLorean for 10 years. The alleged RICO predicate acts not only did not injure Morganroth in his business or property, he directly or indirectly benefitted by such conduct as generating additional work, more involved legal business and thus fee income and claims. Furthermore, Morganroth was paid substantial sums - over $800,000 - but sought over six times that amount in addition for his involvement with this alleged RICO violator for 10 years. When his fee demands went unpaid, the lawyer resorted to civil RICO seeking treble attorneys fees plus a further award of attorneys fees for bringing the civil RICO action: The civil RICO count of Morganroth's Complaint prayed for $31.2 million from DeLorean.

These circumstances put Morganroth in pari delicto with DeLorean. Morganroth represented him in much of the prior RICO conduct alleged and its aftermath - the Cristina Thomopolus divorce case, the UK/ DeLorean car manufacturing dealings which were later litigated in U.S. bankruptcy proceedings including the Cork Gully RICO suit, a federal fraud prosecution where Morganroth claims to be the member of DeLorean's legal defense team to have developed the successful defense

theory, and various fee disputes and litigation with other former DeLorean lawyers - the only legal matters which resemble Morganroth's instant claim against DeLorean. In at least two of these, those of Messrs. Simon and Garratt, Morganroth, as DeLorean's lawyer, engaged in the very same tactics he complained of below as part of a RICO scheme: Morganroth challenged these lawyers' fee claims and maintained (now, it is argued) sham professional negligence claims or counterclaims on DeLorean's behalf against them. These acts are not only not related, they did not harm Morganroth, did not lead to nor are they the proximate cause of Morganroth's instant RICO claim. Rather, they defeated it (and defeated his fraud claim as well) and he was left with his isolated fee claim which he cannot make part of any RICO "scheme" or enterprise.

A RICO plaintiff can recover only to the extent that he has been injured in his business or property by the conduct causing the RICO violation. Sedima, supra; Haroco, Inc. v. American Nat'l Bank & Trust Co., 747 F.2d 384, 398 (7th Cir., 1984), aff'd 473 U.S. 606, 105 S.Ct. 3291, 87 L.Ed.2d 437 (1985). The fact that Morganroth participated in and benefitted professionally from much if not all of DeLorean's alleged historical RICO conduct was established by Morganroth's own witness, Thomas Kimmerly, who testified that Morganroth was DeLorean's most effective weapon against creditors: "He had so many lawsuits ... [Kimmerly]

marveled at, ...how you [Morganroth] could keep everybody at bay ...."

Morganroth lacked RICO standing. Morganroth participated in the alleged predicate acts, if not in an actionable manner as did the attorney in Handeen v. LeMaire, 112 F.3d 1339 (8th Cir., 1997), then at least functionally as DeLorean's attorney, and benefitted professionally from such conduct. He should be barred from resorting to such conduct as predicate acts to sustain his later argument that somehow DeLorean's failure to pay his legal fee claims is a new, separate RICO violation.

II. Additional Reasons For Granting The Petition

A. The Decision Of The Court Of Appeals Is Erroneous

Morganroth failed to present any evidence on the essential elements of a RICO claim. Morganroth purported to present evidence on mail and wire fraud (18 U.S.C. §§ 1341 and 1343), but in order to sustain a RICO claim based on such predicate acts, he had to prove that he was induced to part with money or property in reliance on DeLorean's representations. Appletree Square I v. W.R. Grace & Co., 29 F.3d 1283, 1286 (8th Cir., 1994). Morganroth never presented such evidence. In DeLorean v. Cork Gully, 118 B.R. 932 (E.D. Mich., 1990), a RICO case brought by Morganroth for

DeLorean, the court found that DeLorean failed on each of the elements of the RICO claim advanced by Morganroth where he relied on identical "specious" fraud allegations. The Cork Gully court correctly held: "At best, [he] alleges broken promises or interference with business expectancies. These are not RICO predicate acts." Id. at 945. The same rationale should have been applied to Morganroth below. Instead, the district court let the RICO claims go full course and to the jury, declining to direct a verdict "after [the court had] sat through 3 months of trial."

Morganroth could not assert DeLorean's broken promises to pay the fees of other attorneys and his alleged misdeeds with respect to numerous other persons as predicate acts because Morganroth could not prove they proximately caused any injury to him. Further, after 10 years of representing DeLorean, Morganroth could not reasonably argue he was surprised, misled or personally defrauded by such conduct. Morganroth was well aware of and in many instances participated as DeLorean's lawyer. Moreover, the testimony of each of the other attorneys that they settled or did not pursue their fee claims are further reasons that these representations could not be used to support Morganroth's mail fraud and wire fraud allegations. DeLorean's promises to pay Morganroth attorney fees in the future simply cannot be RICO predicate acts. Cork Gully, supra.

Caught in this dilemma, Morganroth conceded at Page 15 of his Brief before the Sixth Circuit Court that his RICO claim against DeLorean "was not based on the non-payment of money." Yet his only claim was DeLorean's failure to pay his fee demands. That was the only RICO "injury" Morganroth could make out. If non-payment of attorney fees could not, according to Morganroth, be the basis of a RICO claim, then making promises concerning the future payment of such fees could not constitute mail fraud or wire fraud.

The defects in Morganroth's RICO claim were obvious from the start. There was no relationship between any of the schemes outlined in the Complaint or between any of those schemes and the claims in Morganroth's Complaint. In Thompson v. Paasche, 950 F.2d 306, 310 (6th Cir., 1991), the Sixth Circuit held that the RICO plaintiff must prove "a series of related predicates extending over a period of time." Likewise, in Sedima, supra, this Court held that the predicate acts must be "sufficiently related to constitute a pattern." Id., 473 U.S., at 497. DeLorean's alleged diversion of funds from DRLP in 1979 (the "DRLP Scheme" and the "DMCL Scheme"), his receipt of funds in 1982 from a bank which DeLorean believed to be controlled by the Mafia (the "Eureka Savings Scheme"), his failure to disclose to the creditors of DMC his involvement with an attorney who made an offer in 1984 to purchase Logan (the "Creditors Scheme") and his alleged failure to pay other attor-

neys in the past were neither related to each other nor to DeLorean's failure to pay Morganroth's enormous fee claims. See also, Frank v. D'Ambrosi, 4 F.3d 1378, 1385 (6th Cir., 1993). Morganroth, aware of his client's history and present dealings, nevertheless represented him for 10 years.

Morganroth also presented no evidence to support the existence of a RICO enterprise: (1) There must be a common purpose motivating the individuals associated with it; (2) it must be an ongoing organization whose members function as a continuing unit; and (3) there must be a structure distinct from that inherent in the pattern of racketeering activity. U.S. v. Turkette, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981); Frank v. D'Ambrosi, supra, at 1385-1386. Morganroth utterly failed to demonstrate that DeLorean, Logan, Colin Chapman, Roy Nesseth, GPD and anyone else formed any enterprise for the purpose of defrauding DeLorean's attorneys, much less Morganroth, of their fees.

Morganroth failed to present a RICO claim under 18 U.S.C.,§ 1962(a), (b) or (c). Even if Morganroth had proven any predicate acts under § (a), which he did not, he would also have been required to prove that he sustained injuries stemming directly from DeLorean's use or investment of illegally obtained income. Morganroth failed to make any such showing.

Morganroth made no showing that DeLorean controlled an interstate enterprise or that Morganroth's

injury resulted therefrom to support a claim under 18 U.S.C.,§ 1962(b).

18 U.S.C.§ 1962(c), prohibits any person associated with an interstate enterprise to conduct or participate in the conduct of an enterprise's affairs through a pattern of racketeering activity, and Morganroth failed to make any showing hereunder.

Morganroth failed to present any evidence of the existence of an interstate enterprise, any predicate acts, a pattern of racketeering activity, or that his injuries were proximately caused by DeLorean's alleged RICO violation. Sedima, supra, at 495; Holmes v. Securities, supra, 112 S.Ct. at 1317-19.

Finally, 18 U.S.C.,§ 1962(d), the conspiracy section, requires a viable claim under § 1962(a), (b) or (c), before a claim under (d) can be made. Because no claim was ever supported by any evidence under (a), (b) or (c), there was no claim under (d).

The rationale and holding in LeoGrande v. LeoGrande, supra, are applicable to the instant case. There, the plaintiff sought to remove his sons as pension trustees, and the trustees correspondingly sued an attorney, Bakst, who had represented the family business, who in turn brought a RICO counterclaim against the trustees, his clients, alleging eight schemes in which he claimed various acts of mail fraud in connection with sham employment, fraudulent backdating of documents, self-dealing and embezzlement of pension funds. The Court in

LeoGrande cited Holmes, supra, for the proposition that ". . . to have standing [to bring a RICO claim], the alleged racketeering activity of the defendant must be in 'direct relation' to the alleged injury":

> Here, as to the first seven schemes of racketeering activity alleged by Bakst, not a single predicate act is alleged to have been committed either directly or indirectly against Bakst. Rather, these schemes allege that the trustees embezzled from pension funds in which Bakst has no interest, that they filed false tax returns with respect to their own income and with respect to the income of entities in which Bakst has no interest, that they made false representations to actuaries and to accountants with respect to entities in which Bakst has no interest, and that they attempted to defraud Joseph LeoGrande, Sr. and others - but not Bakst himself. Bakst simply has no standing on which to raise these allegations of racketeering acts because Bakst was not the victim of any one of them. A RICO plaintiff must allege that he has been injured by conduct that constitutes a RICO violation, ... and Bakst's proposed pleading sets forth no such allegation as to these seven schemes. Id., at 1360-1361.

For the same reasons, Morganroth's RICO claim should have been dismissed. His Complaint (Appendix C) and his action alleged multiple "schemes" in which he had no interest. He thus had no standing to allege that any of these matters were predicate acts. See Frank v. D'Ambrosi, supra, at 1385-86. Without these alleged fraudulent misrepresentations, Morganroth is left with only broken promises of future payment, which is not RICO conduct. Cork Gully, supra. Morganroth included this claim solely for the purpose of prejudicing DeLorean, forcing him to defend these highly inflammatory allegations, diverting attention from his lack of attorneys fee records and, hopefully, inducing DeLorean to settle. If there was no settlement, this smear of DeLorean could be used to argue for a large jury verdict. As Justice Marshall aptly noted in his dissent in Sedima, supra, the civil RICO defendant faces ". . . a tremendous financial exposure in addition to being labeled a 'racketeer,' [and] will have a strong interest in settling the dispute. *** Many a prudent defendant, facing ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils that it was designed to combat." 473 U.S., at 504, 506. This is precisely what Morganroth intended for his RICO target, John DeLorean, wrapping his fee dispute in allegations of RICO "racketeering" activity. In very similar circumstances, the LeoGrande court assessed Rule 11 sanctions.

B. Further Guidance On Standing Is Warranted

Petitioners respectfully submit that certiorari is warranted to allow this Court to provide further guidance on the question of civil RICO standing. In Holmes v. Securities, supra, this Court set out to resolve a conflict among the Circuits as to the standard to be applied in determining whether a plaintiff has standing to prosecute a civil RICO claim, and held the standard to be that only those whose injuries were proximately caused by the RICO wrongful conduct could maintain the civil suit. One of Holmes' concurring opinions, however, noted that:

> RICO's civil suit provision ... sweeps broadly, authorizing "*[a]ny* person" who is injured by reason of a RICO violation to sue. "[P]erson" is defined to include "*any* individual or entity capable of holding a legal or beneficial interest in property." Section 1961(3) (emphasis added). *** As we have explained in rejecting previous efforts to narrow the scope of civil RICO: "If the defendant engages in a pattern of racketeering activity in a manner forbidden by [Section 1962's] provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under Section 1964(c). There is no

> room in the statutory language for an additional ... requirement." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495.
>
> * * *
>
> Of course, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by [reason of] the conduct constituting the violation." *Id.*, at 496, 105 S.Ct., at 3285. We have already remarked that the requirement of injury in one's "business or property" limits the availability of RICO's civil remedies to those who have suffered injury-in-fact. *Id.*, at 497, ***.
>
> 112 S.Ct. at 1323.

In a further concurring opinion to Holmes v. Securities, it was noted that:

> The ultimate question here is statutory standing: whether the so-called *nexus* (mandatory legalese for "connection") between the harm of which this plaintiff complains and the defendant's so-called predicate acts is of the sort that will support an action under civil RICO. See *Sedima S.P.R.L. v. Imrex Co., Inc.*, *** One of the usual elements of statutory standing is proximate causality. It ... has

> always been the practice of common-law courts (and probably of all courts, under all legal systems) to require as a condition of recovery, unless the legislature specifically prescribes otherwise, that the injury have been proximately caused by the offending conduct.
>
> * * *
>
> Yet another element of statutory standing is compliance with what I shall call the "zone of interests" test, which seeks to determine whether, apart from the directness of the injury, the plaintiff is within the class of persons sought to be benefitted by the provision at issue.
>
> 112 S.Ct. at 1327-28.

Five years after Holmes, the Circuit courts continue to differently describe and apply the civil RICO standing requirement of proximate cause and directness of the injury. For example, in GICC Capital Corp. v. Technology Finance Group, 30 F.3d 289, 292-293 (2nd Cir., 1994), the court held that the plaintiff-creditor had standing because he alleged that the defendants intended to injure him, and thereby satisfied the proximate cause requirement. In contrast, in Pillsbury, Madison & Sutro v. Lerner, 31 F.3d 924, 929 (9th Cir., 1994), the court held that the defendant's intention to harm the plaintiff had no affect on whether the injury was direct.

Moreover, while this Court's majority opinion in Holmes did not include the analysis followed by several Circuits which focused upon the class of plaintiff involved, this analysis persists in the Circuits with inconsistent results. In GICC Capital Corp., supra, at 293, the court held that a different standard applied to creditors as opposed to shareholders whose lack of standing is generally recognized. Further, in Ceribelli v. Elghanayan, 990 F.2d 62, 64 (2nd Cir., 1993), that court held that while shareholders of a residential cooperative would generally not have standing to bring a RICO action, their action would be permitted in that case because the defendant had allegedly breached a fiduciary duty and committed fraud. Thereafter, in Manson v. Staciscu, 11 F.3d 1127, 1130-31 (2nd Cir., 1993), the court held that even if the shareholder had alleged fraud and breach of fiduciary duty, such allegations would not be sufficient without a "special duty" owed to the shareholder, and denied the shareholder standing to sue in RICO because his "... injury, like that of a creditor, generally is derivative of the injury to the corporation, ..." Id.

In Schiffels v. Kemper, 978 F.2d 344 (7th Cir., 1992), the Seventh Circuit applied a stricter test than required by the majority opinion in Holmes by also adopting the zone-of-interests test discussed by Justice Scalia in his concurring opinion, holding that in addition to the proximate cause requirement, the plaintiff must also

demonstrate that he is in the zone-of-interests RICO was meant to protect.

Consequently, while the Circuits refer to the standard announced in the majority opinion in Holmes, there is, nevertheless, continued conflict in the actual application of the standing rules which calls for further definition of this RICO standing test. It is, therefore, respectfully submitted that this Court should provide further guidance concerning civil RICO standing and that this is an appropriate case in which to do so. The various applications of the definitions of proximate cause, including injury-in-fact and zone of interests, have allowed the district and Circuit courts unwarranted latitude. It is submitted that Petitioners were prejudiced by an overly-broad application of civil RICO standing below. If a lawyer can sue his client for fees in civil RICO, then even "broad[er] areas of state common law," of fraud, torts and now breach of contract have been "federalized" by this statute. Sedima, supra, at 501, 504.

C. The Questions Presented Are Important

The questions presented raise important issues of first impression as to the construction and application of federal civil RICO. American Federation of Musicians v. Wittstein, 379 U.S. 171, 175, 85 S.Ct. 300, 302, 13 L.Ed.2d 214, 216 (1964). The issues are novel and important to the public and to the legal profession.

Morganroth's insupportable proposition was, essentially, that every future legal transgression of his

client, John DeLorean, could be linked as yet another RICO scheme to defraud creditors, he being the next victim in that chain after DeLorean's former business associates, former wife and former lawyers. Even if such a proposition were supportable, Morganroth had no standing to maintain it. If Morganroth's position is accepted, after this case, lawyers are armed with civil RICO fee litigation against their clients, based simply on "promises" of future payment over the telephone which clients routinely make.

This case was one of the most abusive stretches of civil RICO. Not paying one's lawyer after promises of payment using the mail or telephones has become a newly cognizable RICO violation if the lawyer can cite to any prior RICO conduct in his client, and who better to know of such conduct then the lawyer. Applying Justice Marshall's admonition from Sedima, supra, to this circumstance, unpaid lawyers, now "...lured by the prospect of treble [attorneys fees plus a further attorneys' fees award for bringing the action] will have a strong incentive to invoke RICO's provisions whenever they can .... Then the [client], facing a tremendous financial exposure [treble damages plus both side's attorneys fees] in addition to the threat of being labeled a 'racketeer' [by his former lawyer], will have a strong interest in settling the dispute," and "many a prudent [client], facing ruinous exposure, will decide to settle even a [fee dispute] with no merit. It is thus not surprising that civil RICO has

been used for extortive purposes, giving rise to the very evils that it was designed to combat." Id. at 504-506. Now one such "extortive purpose" is in the hands of lawyers seeking legal fees. This is not a purpose for which RICO was intended. Klehr v. A.O. Smith Corp., 117 S.Ct. 1984, 1986-87 (1997); Holmes v. Securities, supra.

A lawyer's civil RICO action against his former client for fees cannot serve the acknowledged civil RICO purpose of "encouraging potential private plaintiffs diligently to investigate" and file their claims "and thereby to uncover unlawful activity." Klehr v. Smith, supra, 117 S.Ct., at 1986-87. Rather, it runs afoul of every professional consideration attending the relationship. Moreover, lawyers enjoy an unequal protection in their role as advisors and advocates. A progression of decisions holds that lawyers have no RICO liability from carrying out their professional duties on behalf of their clients, even with knowledge of the unlawful activity and even "if they intentionally assist a client's fraudulent scheme," as long as there is no participation in the operation or management of the enterprise. Reves v. Ernst & Young, 507 U.S. 170, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993); Mathon v. Marine Midland Bank, N.A., 875 F.Supp. 986, 995 (E.D.N.Y.,1995).

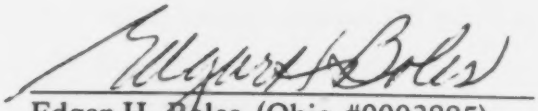
Lawyers and their fee claims are not the parties or injuries within the zone of interests of what civil RICO was designed to protect or serve. There is no nexus

between their fee claims and any cognizable predicate act. Lawyers have no standing to employ civil RICO to bring fee claims against their clients.

Among the defects in his RICO claim, Morganroth had no standing to assert such claim against DeLorean for all of the reasons and considerations presented in the instant Petition. The harm and prejudice in defending an attorney's fee claim wrapped in a civil RICO suit where the lawyer had no fee records was manifest in the jury's decision to award $5 million in punitive damages on top of the total fee demand. The district court should have dismissed the claim upon the several motions filed. The Sixth Circuit Court of Appeals should have reversed the judgment and remanded the action.

CONCLUSION

For all the foregoing reasons, Petitioners John Z. DeLorean and Ecclesiastes 9:10-11-12, Inc. respectfully request that this Honorable Court grant certiorari in this case.



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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Opinion

6th Circuit Case Nº. 95-1563 and 95-1620
Filed August 14, 1997

Pages A-1 thru A-20

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION: 1997 FED App. 0241P (6th Cir.)
File Name: 97a0241p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MORGANROTH & MORGANROTH,
A MICHIGAN GENERAL PARTNERSHIP
AND MAYER MORGANROTH,
Plaintiffs-Appellees/Cross Appellants,

v.

JOHN Z. DELOREAN AND ECCLESIASTES 9:10-11-12,
INC., A DELAWARE CORPORATION
(FORMERLY KNOWN AS LOGAN MANUFACTURING),
JOINTLY AND SEVERALLY,
Defendants-Appellants/Cross-Appellees.

Nos. 95-1563 and 95-1620

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 93-70848 Anna Diggs Taylor, Chief District Judge.

Argued: October 15, 1996

Decided and Filed: August 14, 1997

Before: **MERRITT, COLE**, and **GODBOLD**, Circuit Judges.

COUNSEL:

ARGUED: Edgar H. Boles, THOMAS & BOLES, Chagrin Falls, Ohio, for Appellant. Mayer Morganroth, MORGANROTH & MORGANROTH, Southfield, Michigan, for Appellee. **ON BRIEF:** Edgar H. Boles, Stephen G. Thomas, THOMAS & BOLES, Chagrin Falls, Ohio, for Appellant. Mayer Morganroth, MORGANROTH & MORGANROTH, Southfield, Michigan, Robert N. Holtzman, Ellen R. Nadler, KRAMER, LEVIN, NAFTAILS, NESSIN, KAMIN & FRANKEL, New York, New York, for Appellee.

OPINION

MERRITT, Circuit Judge. This case concerns a fee dispute between a lawyer and two of his former clients. Following a trial that lasted over three months, a jury awarded the lawyer over five million dollars in compensatory damages and five million dollars in punitive damages, but returned a verdict in favor of the former clients on the lawyer's RICO claim. The district court struck the punitive damages award on the ground that punitive damages are not allowed under Michigan law. The former clients appeal the compensatory and consequential damages award on a myriad of grounds discussed below. The lawyer cross-appeals the punitive damages issue. For the reasons set forth below, we AFFIRM the compensatory damages award, we AFFIRM the district court's alteration of the judgment to strike the punitive damages, and we AFFIRM the denial of the defendants' post-trial motion for Rule 11 sanctions on the plaintiffs' RICO claims.

I

FACTS

The plaintiffs, Mayer Morganroth and his law firm, Morganroth & Morganroth, represented the defendants, John DeLorean and Logan Manufacturing (which is now Ecclesiastes 9:10-11-12, Inc.), for a period of approximately ten and one half years during the 1980's and early 1990's. The scope of repre-

sentation included a wide range of litigation and transactional matters, including criminal actions, divorce proceedings, bankruptcy and legal malpractice cases, tax matters, and various corporate transactions. During the course of much of this representation, DeLorean was the sole owner of Logan. Although DeLorean and Logan made a few partial payments to Morganroth for his services, Morganroth claims that they have not paid him for the vast majority of his work. According to Morganroth, the defendants' assets were frozen due to a variety of lawsuits and restraining orders. Morganroth claims that he continued to represent the defendants despite not getting paid based on DeLorean's assurances that the defendants would pay him in full once their assets were unfrozen.

In January of 1993, DeLorean received $5,750,000 from the sale of Logan's assets. Rather than paying Morganroth, however, DeLorean filed a malpractice action against him in New York. That action has been dismissed and is unrelated to the current action. Shortly after DeLorean filed that suit, however, Morganroth brought this action seeking to recover his fees. Morganroth alleged RICO violations, fraud, breach of express contract, breach of implied contract, account stated, and unjust enrichment. The jury found for the defendants on the RICO claims, but found both DeLorean and Logan liable for fraud, breach of express contract, and account stated. Because it found that DeLorean and Logan had breached express contracts, the jury did not make any findings with respect to Morganroth's claims for breach of implied contract, quantum meruit, and unjust enrichment. The jury awarded the plaintiffs $4,739,894 in past due fees and expenses ($3,427,905 from DeLorean and $1,311,989 from Ecclesiastes) and $600,000 for lost business and income. In addition, the jury imposed $5,000,000 in punitive damages against DeLorean.

After the trial and verdict, the defendants filed motions seeking Rule 11 sanctions for Morganroth's RICO claims and asking the court to strike the punitive damages award. The district court denied the Rule 11 motion, but struck the punitive damages award based on Michigan law.

II
ANALYSIS

The parties have raised a myriad of issues on appeal. We will deal with each issue in turn.

A. Admission of Irrelevant "Bad Character" Evidence

The defendants claim that Morganroth's RICO cause of action was a sham claim. They argue that by including this claim, Morganroth was able to present evidence of DeLorean's bad character that was not relevant to any of Morganroth's other claims. The defendants argue that the district court erred by denying their motion to dismiss the RICO claim and their motion to try that claim separately. Because of these errors, they claim, Morganroth's "bad character" evidence unfairly prejudiced DeLorean's defense of the contract, fraud, and account stated claims. We need not review the district court's rulings on DeLorean's RICO motions, however. Instead, we find that, with one exception, the evidence about which DeLorean complains was either presented with no contemporaneous objection or was relevant to the non-RICO claims. The one exception is not sufficiently prejudicial to warrant a new trial.

1. *Failure to Pay Other Attorneys*

Morganroth presented evidence that DeLorean failed to pay a number of his prior attorneys. DeLorean now complains, in particular, about Thomas Kimmerly's testimony that DeLorean owed him three million dollars (R. 291 at 156) and Howard Weitzman's testimony that DeLorean owed him two million dollars (R. 289 at 128 & 141-44). At trial, however, DeLorean did not assert objections based on relevance, bad character evidence, or prejudice to this testimony or any of the other evidence that DeLorean did not pay other lawyers. DeLorean did object when his former wife Christina Thomopoulos, testified that he had not paid prior lawyers, but his objection was based only on the marital privilege. The court overruled that objection, and DeLorean did not make any objection to the substance of the testimony. By consistently failing to object to this evidence, DeLorean waived this claim.

Even if DeLorean had not waived this claim, evidence that DeLorean consistently failed to pay other lawyers was relevant to prove the element of intent to defraud in Morganroth's fraud claim. *See United States v. Ellzey*, 874 F.2d 324, 329 (6th Cir. 1989); Fed. R. Evid. 404(b) ("Evidence of other . . . wrongs . . . may . . . be admissible for . . . proof of . . . intent . . . ."). DeLorean accurately cites *United States v. Jerkins*, 871 F.2d 598, 603-05 (6th Cir. 1989) for the proposition that evidence of other wrongs is admissible under Rule 404(b) only if those wrongs were near in time and substantially similar to the actions at issue and the evidence is not unduly prejudicial. The evidence that DeLorean failed to pay other attorneys meets this test. *Jerkins* explicitly states that the other acts need not be identical to the act as issue. DeLorean's non-payment of other attorneys is not dissimilar to his non-payment of Morganroth in any material way. With respect to nearness in time, the *Jerkins* court upheld admission of prior bad acts that had occurred six years before the activities at issue in that case. Under that standard, DeLorean's non-payment of attorneys whose representation of DeLorean overlapped with Morganroth's is clearly sufficiently near in time. Finally, the probative value of this evidence to demonstrate fraudulent intent, which is not easily susceptible of proof, far outweighs its minor prejudicial effect.

2. ***Forging of Signatures and Documents***

DeLorean's ex-wife, Christina Thomopoulos, testified that she observed DeLorean practicing forging signatures, aging documents, handling documents with rubber gloves, and steaming open envelopes. She testified that she saw DeLorean practice the signatures of his business associates, Colin Chapman and Sir Kenneth Cork, and that on one occasion DeLorean gave her three documents that she knew were not authentic that bore forged signatures of Cork and Chapman. She testified that on one occasion DeLorean had her type up a phony transcript of a conversation that he had with Chapman. After DeLorean's arrest in 1987, Thomopoulos claims that he assigned all of his assets to her, but later told her he had destroyed that document. Thomopoulos also testified that she signed a one-page document

on her wedding day relinquishing her rights to DeLorean's ranch in Pauma Valley. At the time of their divorce, she testified, DeLorean attached a number of additional pages to this signature page purporting to relinquish many other rights. (R. 293 at 120-27; R. 255 at 6-7 & 25-28; R. 256 at 4-5).

At trial, DeLorean objected to much of this evidence on relevance grounds. The trial court, however, accepted Morganroth's argument that this evidence illustrated the difficulty and complexity of Morganroth's representation of DeLorean and refuted DeLorean's claim that Morganroth negligently failed to make diligent inquiry into factual matters related to Morganroth's representation of DeLorean (R. 293 at 40-44).

The trial court's admission of this evidence was correct. Morganroth represented DeLorean in his divorce from Thomopoulos. Evidence that DeLorean forged documents relating to the marriage is thus relevant to demonstrate the scope and nature of that representation, as well as to show the difficulties that DeLorean created for Morganroth within that representation. Those difficulties bolster Morganroth's proof of the amount of work that he performed for DeLorean. Morganroth's arguments as to the relevance of the remaining evidence of forgery and related illicit practices are also correct. DeLorean argued as a defense to Morganroth's fraud and contract claims that Morganroth's representation had been negligent in that he made unsupportable claims without adequate investigation of the underlying facts. Thomopoulos' testimony supports Morganroth's assertion that DeLorean impeded proper investigation by, among other things, forging documents. DeLorean now argues that he never alleged inadequate investigation with respect to the particular documents about which Thomopoulos testified. Nevertheless, DeLorean's allegations raised a general issue for the jury as to whether Morganroth should be denied full compensation due to incompetence. Morganroth was entitled, particularly in light of his quantum meruit claim, to show that his representation was competent and that he was impeded by DeLorean's own actions.

3. *Ties to Organized Crime*

DeLorean argues that Morganroth presented inadmissible evidence that he had ties to organized crime. To support this claim, DeLorean cites a list of sixty-one trial exhibits and a short passage from Morganroth's opening statement.

With one exception, DeLorean did not object to the admission of any of the exhibits he now claims should have been excluded (R. 201, Ex. B). In fact, DeLorean, himself, introduced eleven of the exhibits. The one objection that DeLorean did make, to Exhibits 953A, B, and C, was only on the grounds of lack of foundation. After the objection, a witness provided further testimony that established the foundation. DeLorean did not make any objection based on the substance of the document. By failing to make contemporaneous objections and introducing much of this material himself, DeLorean waived his claim that these exhibits were inadmissable.

In his opening statement, Morganroth stated that DeLorean attempted to obtain ten million dollars and a line of credit from organized crime in order to bail out DeLorean Motor Car, Limited (R. 287 at 94-95). This incident led directly to the cocaine charges against DeLorean that Morganroth h[illegible]ped defend. Details of the lawsuits in which Morganroth represented DeLorean were relevant to Morganroth's non-RICO claims to demonstrate the nature, amount, and complexity of work that Morganroth performed for DeLorean. Morganroth's statement was thus relevant, and did not create reversible error.

4. *Purported Cancellation of the Logan Pension Plan*

Morganroth represented DeLorean in negotiations to sell Logan or its assets that consummated in an asset sale in January of 1993. In connection with this sale, Morganroth negotiated the extent of DeLorean's liability for deficiencies in Logan's pension fund. (R. 292 at 162; R. 281 at 224). After the deal closed, however, DeLorean produced corporate minutes from 1988 purporting to show that he had canceled the pension plan at that time (R. 281 at 221-25; R. 292 at 161-63 & 222-24).

DeLorean objected to this evidence at trial on relevance grounds. The court, however, overruled the objection based on

Morganroth's arguments that this incident demonstrated the difficulty involved in representing DeLorean. That ruling was correct. DeLorean's failure to disclose crucial information to Morganroth substantially increased the amount of work Morganroth was required to perform and was relevant to support Morganroth's proof of the amount of time he billed.

DeLorean argues that he had not, in fact, canceled the pension plan. He argues that his representations that he had canceled it were false. Since he made those representations after Morganroth's representation of him had ended, he claims they are not relevant to Morganroth's fee claims. This position, however, is inconsistent with DeLorean's testimony at trial that he had canceled the pension plan in 1988 (R. 281 at 221-25). The district court's ruling was clearly correct on the facts to which DeLorean testified. A party cannot testify one way at trial and then reverse his or her factual contentions on appeal in order to overcome an adverse evidentiary ruling.

5. ***Money Laundering***

DeLorean complains that during Morganroth's opening statement, Morganroth accused DeLorean of money laundering (R. 287 at 89-90). Morganroth, however, was describing actions by DeLorean that formed the basis for a later claim in bankruptcy proceedings in which Morganroth represented DeLorean. In particular, DeLorean created a limited partnership purportedly to raise money to pay GPD for performing the engineering work to create a prototype DeLorean automobile. DeLorean, however, skimmed off half of the money that was raised, laundered it, and used it to pay off Logan loans. Later, Morganroth represented DeLorean in a suit by the limited partners seeking to recoup those funds. Morganroth's statements were thus descriptive of one of the matters in which he represented DeLorean, and were relevant to show the nature, complexity, and amount of work required by that representation. Moreover, in response to an objection by DeLorean, the court instructed the jury that Morganroth's statements were not evidence and that they would have to decide the case based on evidence actually admitted during the trial (R. 287 at 90).

6. ***Statement About Hillel Levin***

DeLorean's ex-wife, Christina Thomopoulos, testified that DeLorean said, "Wouldn't it be interesting if [Hillel Levin] was caught with some cocaine and he got set up just like I got set up." (R. 256 at 3). At trial, DeLorean objected to this statement solely on the grounds of the marital privilege. He did not object to the relevance or prejudicial effect of the testimony, and thus waived such objections. The marital privilege issue is discussed in section II.C below.

7. ***Relationship With Roy Nesseth***

DeLorean objects to evidence that he associated with Roy Nesseth and that Nesseth was a convicted felon. Morganroth introduced evidence, however, that Logan was subject to court orders and covenants with banks barring it from making payments to associates of DeLorean (R. 292 at 163-66). Nevertheless, and despite at one time agreeing with attorney Richard Berger that Nesseth was DeLorean's associate (R. 292 at 161-63), DeLorean made Nesseth Vice Chairman of Logan (R. 292 at 154) and directed that he continue to be paid despite the orders and covenants (R. 292 at 164-67). Subsequently, Morganroth represented DeLorean in contempt proceeding based on those actions. Evidence of DeLorean's relationship with Nesseth was thus relevant to demonstrate the nature and extent of Morganroth's representation of DeLorean.

DeLorean did not object contemporaneously to testimony that Nesseth was a convicted felon and thus waived that objection. At trial, after Howard Weitzman testified that he told DeLorean that he did not want Nesseth around his office, Morganroth asked Weitzman what he told DeLorean. DeLorean objected solely on the basis of the attorney-client privilege. After the court overruled that objection (which is discussed below in section II.B), Weitzman testified that (i) Nesseth had been convicted of forgery and grand theft; (ii) Nesseth "fronted" a lot of things for DeLorean; (iii) Weitzman thought Nesseth would taint DeLorean's image in any jury trials; and (iv) Weitzman did not like Nesseth. Although this response went beyond the scope

of the question, DeLorean did not make any further objection. He thus waived the objection he now attempts to make.

Michael Beeley, Logan's former president, testified that Nesseth engaged in behavior that was "very close" to unethical or illegal (R. 292 at 154-57). DeLorean did not object to this testimony at trial. Beeley also described a transaction in which he gave checks to Nesseth at DeLorean's behest and learned later that they were not used for the transaction for which DeLorean and Nesseth told him they would be used (R. 292 at 154-57). Although DeLorean objected to that testimony, the objection was based solely on hearsay grounds. DeLorean thus waived his objection to the substantive content of the testimony.

8. ***Appropriation of Logan Profits***

Logan Vice President Melvin Mitchell testified that DeLorean took all of Logan's profits in 1982. DeLorean objected to this testimony at trial on relevance grounds. The testimony was not directly relevant to Morganroth's claims, since Morganroth did not represent DeLorean in 1982. Nevertheless, the trial court allowed the testimony as relevant to rebut DeLorean's claim that he loaned money to Logan during that time. We affirm that ruling.

9. ***Failure to Repay Robin Bailey or Robin Bascheer Loan***

Attorney Thomas Kimmerly testified that DeLorean induced an attorney who is referred to in the record as either Robin Bailey or Robin Bascheer to loan DeLorean $75,000 taken out of other clients' funds. DeLorean did not repay this loan (R. 288 at 22-31). The trial court admitted this testimony over DeLorean's objections because it was relevant to Morganroth's RICO cause of action. Although that ruling was correct, this testimony was not relevant to any of Morganroth's non-RICO claims. Failure to repay a loan is not sufficiently similar to failure to pay an attorney for services rendered to be relevant to prove fraudulent intent. This testimony, then, was improper if DeLorean is correct that it was error for the district court not to dismiss or separate the RICO cause of action. We need not decide the RICO issue, however. Even if this testimony should

not have been admitted, it was not sufficiently prejudicial to warrant reversal.

Reversal based on improper admission of evidence is appropriate only when the admission interfered with substantial justice. *TCP Indus., Inc. v. Uniroyal, Inc.*, 661 F.2d 542, 550 (6th Cir. 1981); Fed. R. Civ. P. 61 ("No error in . . . the admission . . . of evidence . . . is ground for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); Fed. R. Evid. 103(a) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . . ."). Any prejudice caused by admission of the evidence regarding Bailey or Bascheer was slight. In light of the compelling evidence supporting Morganroth's case, *see* Section II.D, *infra*, admission of this evidence was harmless and does not warrant reversal. *See City of Cleveland v. Peter Kiewit Sons' Co.*, 624 F.2d 749, 756 (6th Cir. 1980).

B. Admission of Testimony Protected by the Attorney-Client Privilege

DeLorean asserts that he was prejudiced by the improper admission of evidence protected by the attorney-client privilege. Review of the testimony that DeLorean cites on this point, however, reveals that almost all of that testimony was elicited without any attorney-client privilege objection. Our review of DeLorean's citations, as well as independent review of the trial record, reveals only three instances in which the court admitted testimony against DeLorean over an attorney-client privilege objection. In each of these instances, DeLorean's objections were not well-founded, and the trial court did not err in allowing the testimony.

In the first instance, former DeLorean attorney Howard Weitzman testified as to what DeLorean had said he thought the attorney's fees would be in an action at the start of that action

(R.289 at 120). The district court overruled DeLorean's attorney-client privilege objection on the ground that this was a non-privileged, financial discussion that did not involve the seeking or provision of legal advice. That ruling was correct. Moreover, even if it were incorrect, this evidence was not prejudicial.

Weitzman also testified that DeLorean told him that DeLorean was responsible for Weitzman becoming better known and achieving a greater profile. The district court correctly found that this conversation was also not related to seeking or providing legal advice and was thus not privileged. This evidence, too, was not prejudicial.

Weitzman also testified that he told DeLorean he did not want Nesseth around his (Weitzman's) office because of Nesseth's forgery and grand theft convictions and because Weitzman did not like him. The trial court ruled that this, too, was not related to legal advice or representation. That ruling was also correct. When he made this statement, Weitzman was not providing DeLorean legal advice about Nesseth. He was merely stating his personal opinion about him in the context of explaining why he did not want to have any dealings with him.

C. Admission of Testimony Protected by the Marital Privilege

DeLorean complains that much of Christina Thomopoulos' testimony, set forth in section II.A.2 above, violated the marital privilege. DeLorean made contemporaneous objections at trial to much of this testimony. Thomopoulos, however, was unavailable at trial and did not testify live. Rather, Morganroth read portions of her testimony to the jury. Although DeLorean purportedly made a general continuing objection at the deposition to all marital conversations, he did not make specific objections on that basis to the testimony about which he now complains (R. 255 at 14-17). The trial judge ruled that DeLorean waived the privilege by not objecting when Thomopoulos provided this testimony at her deposition. That ruling was correct. *See People v. Whalen*, 342 N.W.2d 917, 919 (Mich. App. 1984) ("if the spouse testified at the preliminary examination . . . and the marital privilege was not properly

asserted, the preliminary examination testimony is admissible at trial when the marital privilege is asserted by the defendant."). As the trial judge correctly held, the person asserting the marital privilege has the burden of proving that a communication is a marital communication. Thomopoulos' testimony did not establish whether the communications at issue were private marital communications or were made in the presence of others. As the district court correctly found, DeLorean's failure to lodge a specific objection at the deposition deprived Morganroth of the opportunity to question Thomopoulos further regarding the context of these communications.

D. Sufficiency of the Evidence

DeLorean argues that the jury's express contract, fraud, and account stated verdicts were "contrary to the manifest weight of the evidence." DeLorean has waived these claims, however, by failing to raise them below in a timely motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure. *See* 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §2536 (1995) and cases cited therein. As the advisory committee notes to Rule 50's 1991 amendments explain, "[t]he purpose of this requirement is to assure the responding party an opportunity to cure any deficiency in that party's proof that may have been overlooked until called to the party's attention by a late motion for judgment." DeLorean's post-trial motion to set aside the account stated verdict on the ground that the damages award was inconsistent with the account stated proof could be construed as motion for judgment as a matter of law. Such a construction would be unavailing to DeLorean, however, as the motion was filed after the jury verdict and was thus not timely. DeLorean failed to call the alleged failures in Morganroth's proof to the trial court's attention in a timely fashion. He cannot now complain of those alleged failures.

Even if DeLorean had filed a timely motion, however, Morganroth presented overwhelming evidence to the jury that was clearly sufficient to warrant its findings. With respect to the breach of contract claim, for example, DeLorean stipulated the

existence of an express contract (R. 187). From DeLorean's own testimony, a reasonable juror could conclude that DeLorean did not dispute Morganroth's claims regarding the number of hours that he worked and his hourly fee, but claimed only that he should not have to pay the entire fee due to Morganroth's alleged malpractice (R. 281 at 236-43). In addition, Morganroth presented extensive evidence supporting his claims regarding the number of hours that he worked as well as bills that he had sent to DeLorean and testimony that DeLorean had approved those bills. This evidence was further supported by DeLorean and Logan financial statements reflecting amounts owed to Morganroth consistent with his claims. The jury's compensatory damage award was in line with this evidence.

Although we also find no merit in DeLorean's legal arguments regarding the sufficiency of the evidence with respect to Morganroth's fraud and account stated claims, we need not address those arguments in detail in light of our finding that DeLorean waived those claims.

E. Rule 11 Sanctions

Following the jury verdict, DeLorean moved for sanctions pursuant to Fed. R. Civ. P. Rule 11 on the ground that Morganroth's RICO cause of action was frivolous. The district court denied the motion. We need not consider the merits of DeLorean's claim for sanctions, because he did not file it in a timely fashion in accordance with Rule 11's safe harbor provision.

Rule 11(c)(1)(A) provides: "A motion for sanctions under this rule . . . . shall not be filed with or presented to the court unless, within 21 days after service of the motion . . . the challenged . . . claim . . . is not withdrawn or appropriately corrected." The 1993 advisory committee notes clarify that "[g]iven the 'safe harbor' provisions [of subsection (c)(1)(A)], a party cannot delay serving its Rule 11 motion until conclusion of the case . . . ." This is clearly in keeping with the objective of the safe harbor provision to provide a party with the opportunity to withdraw a frivolous claim prior to the imposition of sanctions.

DeLorean argues that Rule 11 sanctions are warranted in this case despite Rule 11's safe harbor provision because a RICO suit against a former client is so clearly frivolous that any attorney filing such a suit should anticipate Rule 11 sanctions. In addition to its questionable premise, DeLorean's argument demonstrates a failure to understand the purpose of the safe-harbor provision. *Any* claim subject to Rule 11 sanctions is so frivolous that a lawyer should know better than to file it. The safe harbor provision nevertheless requires opposing counsel to put the filing lawyer on notice that he or she may be sanctioned and to give the filing lawyer an opportunity to reconsider. Rule 11 does not distinguish degrees of frivolity. We find that there is no reason why RICO claims should be given less solicitude under Rule 11 or why RICO claims against attorneys' former clients are inherently more obviously subject to Rule 11 sanctions than any other claims.

F. Damages for Lost Business and Income

DeLorean argues that the jury award of $600,000 to Morganroth for lost business and income was "against the manifest weight of the evidence and is contrary to law." DeLorean does not argue merely that the jury miscalculated the amount of consequential damages to which Morganroth was entitled. Rather, he argues that Morganroth was not entitled to any consequential damages because the losses Morganroth claimed are not compensable lost business and income damages as a matter of law. As such, DeLorean's argument is one of insufficiency of the evidence. DeLorean failed to raise this issue in a timely motion for judgment as a matter of law and has thus waived this claim for the reasons set forth in Section II.D above.

The plain error doctrine does not salvage this issue. Unlike punitive damages, discussed below in Section II.H, consequential damages are available in breach of contract claims under Michigan law. *See, e.g., Lawrence v. Will Darrah & Assocs., Inc.*, 516 N.W.2d 43 (Mich. 1994). Thus submission of this issue to the jury, without any objection by DeLorean, was not plain error. Reversing now on the ground that Morganroth's evidence was not sufficient to warrant consequential damages

would deprive Morganroth of the opportunity to put on evidence to remedy the alleged insufficiency, contrary to the advisory committee's admonition discussed in Section II.D above.

G. Statute of Limitations

DeLorean asserts that Morganroth's recovery should have been limited to damages suffered subsequent to February 25, 1987, due to Michigan's six-year statute of limitations on Morganroth's state law claims. DeLorean pled the statute of limitations as a defense in his answer and in the pre-trial order, but he did not make any substantive motions on this basis and he failed to include this defense in the jury instructions or to argue it to the jury. DeLorean acknowledges that he thus waived this issue. He argues, however, that allowing damages prior to February 25, 1987 constituted plain error.

For his part, Morganroth argues that the statute of limitations was either tolled or is not available as a defense because (i) DeLorean and Logan fraudulently concealed the existence of a claim, *see* Mich. Comp. Laws § 600.5855; (ii) DeLorean and Logan made false representations or concealments with the expectation that Morganroth would rely on them, *see Lothian v. City of Detroit*, 324 N.W.2d 9, 17-18 (Mich. 1982); (iii) DeLorean and Logan acknowledged their past obligations in signed writings, *see In re Easterbrook's Estate*, 319 N.W.2d 655, 659 (Mich. App. 1982); Mich. Comp. Laws § 600.5866; and (iv) DeLorean and Logan voluntarily made payments to Morganroth, *see Beaupre v. Holzbaugh*, 41 N.W.2d 338, 341 (Mich. 1950). These arguments are sufficiently weighty that the district court's failure to dismiss this action based on the statute of limitations was not plain error.

H. Punitive Damages

The jury awarded Morganroth five million dollars in punitive damages. Following the trial, however, the district court granted DeLorean's motion to amend the judgment to strike the punitive damages on the ground that "punitive" damages — as distinguished from "exemplary" damages — are not available under Michigan law. Morganroth does not argue that Michigan

law allows punitive damages. Instead, he argues (i) that DeLorean was estopped from raising this argument because he requested the jury instruction regarding punitive damages; and (ii) that punitive damages are allowed under either federal law or New Jersey law.

Michigan law allows exemplary damages, but only to compensate the plaintiff "for the humiliation, sense of outrage, and indignity resulting from injuries maliciously, willfully and wantonly inflicted by the defendant." *Kewin v. Massachusetts Mut. Life Ins. Co.*, 295 N.W.2d 50, 55 (Mich. 1980) (internal quotation marks omitted). Under Michigan law, exemplary damages are merely one category of compensatory damages. *Veselenak v. Smith*, 327 N.W.2d 261, 264 (Mich. 1982). Michigan does not allow juries to award damages going beyond compensatory damages in order to punish the defendant. *Kewin*, 295 N.W.2d at 55; *Hayes-Albion v. Kuberski*, 364 N.W.2d 609, 617 (Mich. 1985).

The jury instructions in this case mentioned both exemplary and punitive damages, but defined only punitive damages. The jury received the following instruction:

> *Punitive Damages*. You may also decide whether the plaintiffs are entitled to the award of any punitive damages for the fraud alleged. The function of punitive damages is to punish he defendant for malicious conduct and to deter similar conduct by others. Whether you decide to award any punitive damages should be based on whether you find that the defendants acted wilfully, deliberately, maliciously, or with reckless disregard of the plaintiff's rights. If you find that they have done one of those things, then you may award punitive damages.
>
> Punitive damages may be awarded even if the violation of plaintiff's rights resulted in only nominal compensatory damages. That is, even if the plaintiff can show no damages

> or other injury as a result of the defendant's actions, if these actions were deliberate, willful or made with reckless disregard of plaintiffs [sic] rights, punitive damages are appropriate.

(R. 201, Ex. L). Based on this instruction, the jury's punitive damages award could only have been made to punish DeLorean, and not as compensation for any humiliation, sense of outrage, or indignity that Morganroth may have suffered. This instruction was thus clearly improper under Michigan law.

In *Thompson v. Paasche*, 950 F.2d 306 (6th Cir. 1991), we held that the award of punitive damages constitutes plain error under Michigan law when actual damages are sufficient to make the plaintiff whole. Such an award requires reversal, even if the defendant failed to object to the punitive damages jury instruction. *Id.* at 314-15. *Thompson* is on all fours with this case, and requires us to affirm the district court's striking of the punitive damages award.

Morganroth attempts to distinguish this case from *Thompson* by arguing that DeLorean not only failed to object, but affirmatively "requested, approved, and stipulated to" the punitive damages jury instruction. The record does not support Morganroth's this contention. The only mention in the record of the source of the original jury instructions is the trial judge's statement prior to hearing objections on the instructions that "[t]he Court has this morning presented the instructions *it proposes* to Counsel . . ." (R. 276 at 3) (emphasis added). The record does not contain proposed jury instructions from either party. Thus we cannot conclude that DeLorean requested the initial punitive damages instructions.

Morganroth's argument is apparently based on a supplemental instruction that the court gave in response to a question that the jury asked after it began deliberating. Examination of the transcript, however, reveals that Morganroth, not DeLorean, proposed the substantive content of that supplemental instruction. Apparently because the original jury instructions mentioned both punitive and exemplary damages, but

defined only punitive damages, the jury submitted the question "Are punitive damages the same as exemplary damages?" (R. 266 at 2). The trial judge initially proposed the response "punitive are the same as exemplary for purposes of this case," but DeLorean objected on the ground that punitive damages and exemplary damages are different under Michigan law. *Id.* In response, Morganroth stated that he was not seeking exemplary damages (R. 266 at 3) and proposed that the court respond that "only punitive damages are sought in this case." (R. 266 at 5). The court adopted that response. Thus, Morganroth, not DeLorean, proposed the supplemental jury instruction and invited the court to make the error in question. The error in failing to properly instruct may not be attributed to DeLorean, and the district court properly corrected its error by setting aside the punitive damages.

Morganroth argues that he is entitled to punitive damages under federal law because DeLorean's fraud against him violated the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 & 1343. Violations of these sections of the federal criminal code, however, do not give rise to private causes of action. *Ryan v. Ohio Edison Co.*, 611 F.2d 1170, 1177-79 (6th Cir. 1979); *Napper v. Anderson, Henley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974). Since no damages can be obtained in an action brought directly under these statutes, they cannot be used to bootstrap punitive damages into an action for fraud brought under state law.

Morganroth also argues that the district court should have allowed punitive damages under the law of New Jersey, where DeLorean resides. Morganroth argues that under the interest analysis approach, New Jersey's "interest in deterring its citizens from committing fraud and violating the federal mail and wire fraud statutes . . . ." is determinative. Morganroth raised this argument for the first time after trial in response to DeLorean's motion to strike the punitive damages. Throughout the trial of this case, the parties and the district court never questioned that Morganroth's non-RICO claims were governed by Michigan law. Morganroth's offices are located in Michigan. Although his representation of DeLorean caused him to travel outside of

Michigan on occasion, he performed the majority of his work for DeLorean at his Michigan offices. Our review of the record indicates that the incidents and contacts giving rise to this suit occurred mostly in Michigan. In light of that conclusion and the general assumption, maintained until the jury returned its verdict, that Michigan law governed this case, we find that the district court did not err when it declined to apply New Jersey law to the punitive damages issue.

III
CONCLUSION

Based on the above analysis, we AFFIRM all of the rulings challenged in this appeal.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Order Denying
Petition For Rehearing

6th Circuit Case Nº. 95-1563 and 95-1620
Filed October 14, 1997

Pages B-1 thru B-2

Nos. 95-1563 and 95-1620

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs-Appellees/Cross Appellants,	)	**ORDER**
	)	**DENYING**
v.	)	**PETITION**
	)	**FOR REHEARING**
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Oct. 14 1997**
Logan Manufacturing),	)	**Leonard Green,**
Jointly and Severally,	)	**Clerk**
	)	
Defendants-Appellants/Cross-Appellees.	)	

Before: **Merritt, Cole**, and **Godbold**, *Circuit Judges.

* The Honorable John C. Godbold, Circuit Judge of the United States Court of Appeals for the Eleventh Circuit, sitting by designation.

Upon consideration of the petition for rehearing filed herein by the defendants-appellants, the Court concludes that all of the questions addressed in the petition for rehearing were fully considered upon the original submission and a decision of this case.

In their petition for rehearing, defendants argue that our panel incorrectly decided that they waived their right to appeal

the sufficiency of the evidence on the claims for breach of express contract, fraud, account stated, and the request for lost business and income damages because defendants had failed to make a timely motion for judgement as a matter of law pursuant to Fed. R. Civ. P. 50(a). Although defendants claim that the District Court refused to allow them to present Rule 50(a) motions, defendants' selective quotes from the District Court's statements are misleading. The District Court only prevented defendants from making oral argument on the two already filed Rule 50(a) motions. One motion addressed the RICO claim and the other motion addressed the claims for breach of implied contract, quantum meruit, and unjust enrichment. There is nothing in the record to suggest that the District Court prevented them from filing other motions. In addition, our opinion explicitly held that even if defendants had filed timely Rule 50(a) motions for the claims of breach of express contract, fraud, and account stated, the record showed sufficient evidence to support these claims.

It is therefore ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Complaint and Demand For Jury

District Court Case №. 93-CV-70848
Filed February 25, 1993

Pages C-1 thru C-52

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Feb. 25, 1993**
Logan Manufacturing),	)	
Jointly and Severally,	)	
Defendants.	)	

COMPLAINT AND DEMAND FOR JURY

NOW COME the Plaintiffs, MORGANROTH & MORGANROTH, a Michigan partnership, and MAYER MORGANROTH, by and through their attorney, Mayer Morganroth (in pro se), and for their Complaint against Defendants, John Z. DeLorean and Ecclesiastes 9:10-11-12, Inc., a Delaware corporation (formerly known as Logan Manufacturing Company, a Delaware corporation), jointly and severally, state as follows:

Jurisdiction and Venue

1. Plaintiff, Morganroth & Morganroth, is a Michigan partnership which was formed in January 1989 and performs professional legal services with its office located in the City of Southfield, County of Oakland, State of Michigan. At all times

after the formation of the partnership, the partners of Morganroth & Morganroth were licensed to practice law in the State of Michigan and the federal courts thereof.

2. Plaintiff, Mayer Morganroth, is an individual who resides and is a citizen of the County of Oakland, State of Michigan. At all times relevant herein, Mayer Morganroth was licensed to practice law in the State of Michigan and in the federal courts thereof.

3. Defendant, John Z. DeLorean, is an individual who resides and is a citizen of the City of Bedminster, State of New Jersey.

4. Defendant, Ecclesiastes 9:10-11-12, Inc. (formerly known as Logan Manufacturing Company) (hereinafter referred to as "Logan"), is a Delaware corporation having its principal place of business in the City of Logan, State of Utah with an office located in the City of Bedminster, State of New Jersey. At all times relevant herein, the business of Logan was the manufacturing of motorized snow grooming vehicles for use in the skiing industry.

5. The subject matter jurisdiction of this Court over this action is based upon:

a. 28 U.S.C. §1331 in that this civil action arises under the laws of the United States, including, but not limited to, 18 U.S.C. §1961 et seq.;

b. 28 U.S.C. §1332 in that there is an absolute diversity of citizenship between Plaintiffs and Defendants and the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs;

c. 18 U.S.C. §1964; and

d. Principles of pendent jurisdiction.

6. Venue of this action is proper in this Court under 18 U.S.C. §1965(a) and 28 U.S.C. §1391 in that the events, agreements, services, advise, and actions giving rise to Plaintiffs, claims occurred in the Eastern District of Michigan.

7. Defendants retained Plaintiffs to perform legal services in connection with matters located in the State of Michigan, Eastern District, Southern Division; entered into a contractual agreement with Plaintiffs in the State of Michigan, Eastern District, Southern Division; and have engaged in activities constituting breach of contractual obligations and torts in the State of Michigan, Eastern District, Southern Division, which activities have caused damage to Plaintiffs. This action is based upon and seeks to recover monetary damages in connection therewith. Furthermore, Defendants have engaged in a pattern of racketeering in the State of Michigan, Eastern District, Southern Division, as defined in 18 U.S.C. §1961 et seq. to the detriment of Plaintiffs and Plaintiffs seek to recover monetary damages in connection with Defendants' violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

8. This Honorable Court has personal jurisdiction over Defendants under MCL 600.705, MCL 600.725, and 18 U.S.C. §1965 (a) and (b).

General Allegations

9. Plaintiff, Mayer Morganroth, was retained by Defendants in or about November 1982 to provide professional legal services. Plaintiff, Mayer Morganroth, provided extensive professional legal services to Defendants in connection with a

multitude of matters, cases, transactions, and actions through February 2, 1993.

10. Plaintiff, Mayer Morganroth, formed a Michigan partnership known as Morganroth & Morganroth which provides professional legal services. From 1989 through February 2, 1993, Plaintiff, Morganroth & Morganroth, performed extensive professional legal services to Defendants in connection with a multitude of matters, cases, transactions, and actions.

11. From November 1982 through February 2, 1993, Plaintiffs have provided extensive professional legal services to Defendants in connection with in excess of 30 separate cases collectively seeking in excess of $500,000,000 from Defendants, including, but not limited to, two criminal matters for John Z. DeLorean, two tax matters for John Z. DeLorean, two tax audits for John Z. DeLorean, a divorce action for John Z. DeLorean, the DMC Bankruptcy and adversary proceedings for John Z. DeLorean and Logan, proceedings to evict John Z. DeLorean from his New York cooperative apartment, the United States enforcement action of the $53,000,000 judgment obtained against John Z. DeLorean in England, the United Kingdom action seeking vacatur of the $53,000,000 judgment obtained against John Z. DeLorean, numerous matters involving restraining orders against John Z. DeLorean and Logan, numerous actions alleging fraud and RICO conduct against John Z. DeLorean, various litigations consolidated against John Z. DeLorean and Logan, several cases involving Logan's business dealings, arbitration proceedings, and numerous appeals.

12. From November 1982 through February 2, 1993, Plaintiffs have provided extensive legal services to Defendants in connection with a multitude of business, financial, and real estate

matters, including, but not limited to, negotiations of multimillion dollar financing for Defendants on numerous occasions, sale of John Z. DeLorean's New York cooperative apartment for $11,500,000, numerous pending or potential sales of Logan, the ultimate sale of Logan for $16,500,000, numerous contracts documents, leases, and agreements arising out of or related to Defendants, business, financial, or real estate dealings, and as Defendant, Logan's, corporate counsel.

13. From November 1982 through February 2, 1993, Defendants, legal entanglements and dealings were so cumbersome and enormous that Plaintiffs were forced to turn away and reject numerous other clients in order to devote the necessary time and energy to Defendants. In fact, from November 1982 through February 2, 1993, Plaintiffs worked day and night, during legal and religious holidays, vacations, weekends, at the office, at home, while driving in automobiles, and even while in the hospital in order to provide Defendants with necessary legal services.

14. From November 1982 through February 2, 1993, Plaintiffs fully and successfully provided legal representation to Defendants in connection with Defendants, legal entanglements, transactions, and dealings. Plaintiffs were responsible for, assisted, and/or participated in John Z. DeLorean's acquittal in two United States criminal cases; the dismissal or victory in approximately 30 cases filed against Defendants which sought in excess of $500,000,000 from Defendants; the reversal of an Internal Revenue Service decision that had held that Defendant, John Z. DeLorean, owed taxes and interest on the $8,500,000 supposedly loaned from GPD to DeLorean; the agreement for sale and closing of John Z. DeLorean's New York cooperative

apartment for $11,500,000; the negotiations, contracts, and agreements wherein Defendants obtained financing which saved all of Defendants' assets from foreclosure, liquidation, seizure, levy, and execution; the agreements for sale and the closing of the sale of Logan for $16,500,000 which had disintegrated on numerous occasions only to be revived by Plaintiffs; and general consultation, advice and representation on a daily basis in connection with Defendants, business, financial, and real estate dealings.

15. Plaintiffs also successfully resolved several of Defendants' matters through settlement all of which greatly benefitted Defendants. Plaintiffs settled the Capitol Cadillac case for $17,000 wherein Capitol Cadillac alleged that John Z. DeLorean defrauded Capitol Cadillac out of in excess of $1,000,000 by selling cars that DeLorean did not own. In addition, Plaintiffs settled the Trustee's claims in the DMC Bankruptcy (which claims totaled in excess of hundreds of millions of dollars) for $9,360,000, even though the Trustee already had refused John Z. DeLorean's previous settlement offer of $19,000,000 made through previous counsel. Moreover, in connection with said settlement, Plaintiffs also prevented an effort by the Trustee and Cristina DeLorean Thomapolous to completely divest John Z. DeLorean of any interest in Logan, and Plaintiffs in fact obtained Logan for John Z. DeLorean as part of the settlement with the Trustee (which brought benefits to John Z. DeLorean in the approximate amount of $27,000,000). Furthermore, Plaintiffs settled, for $7,000,000, DSQ's action to enforce, in the United States, DSQ's $53,000,000 judgment (approximately $70,000,000 with interest) obtained against John Z. DeLorean in the United Kingdom and which had caused all of

the Defendants' assets to be restrained by court order. As part of said settlement, John Z. DeLorean also was released by the United Kingdom and Ireland in connection with civil fraud and conspiracy claims involving John Z. DeLorean, Fred Bushell, and others regarding kickbacks on invoices paid to Lotus Car Company in the amount of $12,500,000 which was misappropriated, and the $8,500,000 missing from GPD. A criminal warrant has been issued by the United Kingdom against John Z. DeLorean in connection therewith. Mr. Bushell pled guilty to the charges of fraud and conspiracy with DeLorean after United Kingdom law enforcement officials raided his apartment and discovered documents related to the charges. Mr. Bushell was sentenced to four years in jail, fined 2,000,000 British Pounds, and a civil case instituted by the United Kingdom currently is pending against Bushell, however, Plaintiffs obtained releases for DeLorean with respect to said civil action.

16. Defendants agreed and promised to pay all expenses and attorney fees in connection with legal services provided by Plaintiffs upon Plaintiffs, customary rates, however, as the years passed, Plaintiffs often billed Defendants at reduced rates and/or elected not to bill Defendants for certain services rendered due to the large volume of work performed and the extent of Defendants' legal entanglements and dealings.

17. For substantially all of the time between November 1982 and February 2, 1993, Defendants experienced extreme financial difficulties, including, but not limited to, court ordered restraining orders which encumbered all of their assets. Although Defendants were permitted to pay attorney fees and expenses during said time frame, their immediate ability to do so routinely was impeded by such financial constraints.

18. From November 1982 through February 2, 1993, Defendants paid Plaintiffs partial payments of the legal fees and expenses incurred in connection with legal representation of Defendants. Defendants repeatedly represented, assured, and warranted throughout said time period that all amounts incurred would be paid in full when monies, assets, and/or properties became available or unrestrained.

19. Although Defendants continued to sporadically make partial payments to Plaintiffs for legal services rendered, the past due and outstanding fees and expenses mounted. In fact, Plaintiffs were required to pay virtually all expenses associated with legal representation rendered to the Defendants, including, but not limited to, deposition costs, filing fees, transportation costs, service of process costs, investigatory costs, document production costs, trial costs, costs of mailings and courier services, copying costs, transcript costs, and telefax costs. In fact, Plaintiffs travelled and stayed in the United Kingdom at their own expense in connection with the action to vacate DSQ's $53,000,000 judgment obtained in the United Kingdom and attended and participated in the hearings before the High Court of Chancery, which travel, lodging, and court expenses still have not been reimbursed by Defendants.

20. Plaintiffs repeatedly inquired, requested, and demanded that all fees and expenses be paid in connection with legal services rendered. Plaintiffs explained and informed Defendants on numerous occasions that the substantial past due and outstanding balance owed by Defendants was detrimentally affecting Plaintiffs' law practice.

21. Defendants repeatedly and continually acknowledged the amounts past due and owing to Plaintiffs, and pleaded with Plaintiffs to continue representation.

22. Defendants repeatedly and continually begged, cajoled, pleaded, and asked Plaintiffs to continue legal representation since Defendants could not survive without Plaintiffs. In addition, Defendants repeatedly represented, assured, and warranted that all amounts incurred would be satisfied as soon as monies, assets, and/or properties became available or unrestrained.

23. Defendants repeatedly and continually stated, represented, and certified the amounts due and owing to Plaintiffs, and submitted documents and financial statements representing and certifying same to courts, arbitrators, and others, including, but not limited to, the following:

A. On or about October 3, 1990, John Z. DeLorean represented, acknowledged, agreed, and certified that as of said date, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance of $2,200,000.

B. On or about December 6, 1990, February 22, 1991, and June 27, 1991, Logan represented, acknowledged, agreed, and certified that as of November 1990, Logan owed Plaintiffs an outstanding balance in the amount of $1,383,886.00.

C. On or about December 5, 1990, John Z. DeLorean represented, acknowledged, agreed, and certified that as of November 1990, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance in the amount of $2,520,819.

D. On or about May 10, 1991, Logan represented, acknowledged, agreed, and certified that as of April 18, 1991,

Logan owed Plaintiffs an outstanding balance in the amount of $1,398,864.26.

E. On or about May 10, 1991, John Z. DeLorean represented, acknowledged, agreed, and certified that as of April 18, 1991, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance in the amount of $2,613,380.

F. On or about July 31, 1991, Logan represented, acknowledged, agreed, and certified that as of July 16, 1991, Logan owed Plaintiffs an outstanding balance of $1,408,689.26.

G. On or about July 31, 1991, John Z. DeLorean represented, acknowledged, agreed, and certified that as of July 15, 1991, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance in the amount of $2,622,230.

H. On or about December 10, 1991, August 13, 1992, August 19, 1992, August 26, 1992, October 26, 1992, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, and January 28, 1993, Logan represented, acknowledged, agreed, and certified that Logan owed Plaintiffs an outstanding balance in the amount of $1,408,689.26.

I. On or about December 19, 1991, John Z. DeLorean represented, acknowledged, agreed, and certified that as of December 2, 1991, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance in the amount of $2,660,310.

J. On or about October 23, 1992, October 26, 1992, November 6, 1992, November 7, 1992, and November 9, 1992, John Z. DeLorean represented, acknowledged, agreed, and certified that as of October 19, 1992, John Z. DeLorean owed Plaintiffs an outstanding balance in the amount of $2,897.855.

K. On or about December 21, 1992, December 24, 1992, January 4, 1993, and January 5, 1993, John Z. DeLorean represented, acknowledged, agreed, and certified that as of December 11, 1992, John Z. DeLorean, individually, owed Plaintiffs an outstanding balance in the amount of $2,927,905.

L. On or about January 27, 1993, January 28, 1993, and February 1, 1993, John Z. DeLorean represented, acknowledged, agreed, and certified that John Z. DeLorean, individually, owed an outstanding balance to Plaintiffs in the amount of $2,950,000.

24. Unbeknownst to Plaintiffs, Defendants never intended to satisfy any portion of the outstanding balance owed to Plaintiffs.

25. Plaintiffs relied on Defendants, representations, warranties and assurances, and continued to perform legal services for Defendants.

26. Plaintiffs had resolved case after case and matter after matter until it became apparent that monies, assets, and/or properties were available and/or unrestrained, and that Defendants would have the opportunity and capacity to satisfy all amounts incurred.

27. Plaintiffs again inquired, requested, and demanded that all amounts be immediately satisfied by Defendants, on numerous occasions, including, but not limited to, August 13, 1992, August 19, 1992, and August 26, 1992.

28. On numerous occasions, including, but not limited to, August 13, 1992, August 19, 1992, and August 26, 1992, Defendants represented that they could not satisfy the outstanding balance until after the closing of the sale of Logan since the proceeds from the sale of John Z. DeLorean's cooperative apartment were required to immediately satisfy the DSQ

settlement (DSQ possessed security interests, liens, and deeds of trust on Defendants' assets) and to immediately remit monies to Logan for operational capital until the Logan sale closed in order to maintain the viability of Logan which was in jeopardy.

29. Defendants represented, warranted, and assured Plaintiffs that the entire outstanding balance would be satisfied prior to the end of January 1993, on numerous occasions, including, but not limited to, on or about August 13, 1992, August 19, 1992, August 26, 1992, October 26, 1992, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, and January 28, 1993.

30. Unbeknownst to Plaintiffs, Defendants never intended to satisfy any portion of the outstanding balance owing to Plaintiffs.

31. Plaintiffs relied on Defendants' representations, warranties, and assurances, and allowed the Logan sale to close on January 5, 1993, forebeared from pursuing their remedies at law and in equity, and performed additional legal services in connection with tax matters, two civil cases pending in the State of Michigan, and general advice and consultation regarding business, financial, and real estate matters.

32. In connection with the closing of the Logan sale, Defendant, John Z. DeLorean, as chairman and sole shareholder of Logan, personally assumed and warranted payment to Plaintiffs of all outstanding legal fees and costs incurred by Logan since said outstanding balance was treated as subordinated debt with respect to the Logan sale, and John Z. DeLorean was to receive the proceeds from said sale subject to said debt and obligation.

33. Although Defendants continued to represent, warrant, and assure Plaintiffs that the entire outstanding balance would be satisfied prior to the conclusion of January 1993, Defendants have failed and refused to do so.

34. On or about January 29, 1993, when pressed by Plaintiffs, John Z. DeLorean represented and told Plaintiffs that an agreement to sell a portion of the Bedminster Estate would be consummated on February 2, 1993, and Plaintiffs would be paid all amounts outstanding on said day and date. Nevertheless, Defendants refused and neglected to do so on said date and thereafter.

35. Unbeknownst to Plaintiffs, Defendants never intended to satisfy any portion of the outstanding amounts owed to Plaintiffs, but rather, Defendants intended to defraud Plaintiffs out of legal services, defraud Plaintiffs out of legal fees and expenses, and fraudulently induce Plaintiffs to forebear from exercising their rights and remedies at law and in equity by making and attempting to cause Plaintiffs to rely upon fraudulent misrepresentations and omissions.

COUNT I

Violation of Racketeer Influenced and Corrupt Organizations Act ("RICO")

(Defendants, Logan and John Z. DeLorean)

36. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 35 of this Complaint as if restated herein word for word.

37. Plaintiffs are informed and believe and thereupon allege that John Z. DeLorean and Logan have conspired together to conceive numerous schemes carried out through an ongoing

and continuous pattern of racketeering activity to defraud Plaintiffs and other third parties.

38. Defendants have been and are employed and/or associated with each other and others in a partnership, corporation, and/or association in fact which formed and comprised an enterprise as defined in 18 U.S.C. §1961-1965 et seq.

39. The foregoing enterprise comprised formal or informal associations in fact that functioned as continuing units over time through a hierarchical or consensual decision-making structure.

40. John Z. DeLorean had and currently has control over the management and operation of the foregoing enterprise.

41. Commencing in or about 1978, and continuing on an ongoing basis through the present, Defendants have engaged in a pattern of at least hundreds of acts of racketeering in an effort to defraud Plaintiffs and other third parties.

42. Said pattern of racketeering has consisted of at least ten different fraudulent, unlawful, and wrongful schemes to defraud Plaintiffs and other third parties.

43. The fraudulent, unlawful, and wrongful schemes to defraud Plaintiffs and third parties, include, but are not limited to, the following:

A. The DRLP Scheme. In 1979, Defendants fraudulently, unlawfully, and wrongfully converted for their own use $8,500,000 of $17,787,167.14 which was raised from the limited partnership known as DRLP. Defendants defrauded DRLP and its partners by falsely and fraudulently preparing a private placement memorandum and certain exhibits and supplements thereto, and presenting said documents to DRLP and

its partners for the supposed purposes of soliciting and raising funds for the research and development on the DeLorean sports car and the ERM plastic process, which was supposed to provide the partners in DRLP with tax deductions pursuant to Section 174 of Internal Revenue Code. Instead, Defendants intentionally, wrongfully, fraudulently, and illegally diverted $8,500,000 of the funds raised pursuant to the private placement memorandum through a series of secret back to back bank transactions and Defendants thereafter used said monies to further the conspiracy and satisfy their own personal financial obligations and remove encumbrances on their own property.

B. THE DMCL Scheme. Defendants and the principals of Lotus, GPD, Fred Bushell, and Colin Chapman conspired and acted in concert to unlawfully and wrongfully defraud DMCL and DRLP with respect to the $17,787,167.14 that was raised for the supposed purpose of research and development on the DeLorean sports car and the ERM plastic process. Defendants and their coconspirators falsely and fraudulently misrepresented to DMCL (entity manufacturing the DeLorean sports car) that the $17,787,167.14 raised would only satisfy a portion of DMCL's contract with Lotus and GPD for engineering and development of the DeLorean sports car when in fact the actual and true contract only was in the amount of $10,472,000. Defendants and their coconspirators fraudulently, unlawfully, and wrongfully misrepresented to DMCL that in addition to the supposed contract price of $17,787,167.14, DMCL also would be required to separately satisfy additional invoices direct to Lotus Car Company in the approximate amount of 7,187,758 British Pounds ($12,634,614 U.S.), which amount Defendants secretly diverted for their own personal use and to further the conspiracy itself.

Said conduct and scheme ultimately was pursued in the United Kingdom in the case entitled DSQ v. Lotus Cars. Limited, Hazel Chapman (widow of Colin Chapman), Frederick Bushell, and John Z. DeLorean. Said litigation still is pending against all of the Defendants except for John Z. DeLorean who was released from any and all civil fraud liability in connection with the DSQ settlement in the United States in 1990. DSQ named Hazel Chapman as a defendant (widow of Colin Chapman) since Colin Chapman was deceased prior to the institution of said action. Frederick Bushell pled guilty in the United Kingdom to conspiring with John Z. DeLorean and the late Colin Chapman in connection with said scheme after United Kingdom law enforcement officials raided his residence and uncovered documents evidencing the scheme. Mr. Bushell was sentenced to four years in prison and fined 2,000,000 British Pounds. Thereafter, in or about June 1992,, a warrant was issued for the arrest of John Z. DeLorean in the United Kingdom in connection with said scheme propounded on the same facts alleged against Bushell, which warrant still is outstanding.

C. The Eureka Federal Savings and Loan Scheme. In 1982, Defendants unlawfully and wrongfully conspired to defraud Eureka Federal Savings and Loan ("Eureka") and its principals of $10,000,000 through fraudulent misrepresentations that if Eureka and its principals (believed to be Mafia by John Z. DeLorean) provided Defendants with $10,000,000 to be used for the purpose of reopening the DMCL plant in Ireland, which was closed and in receivership, then Eureka and its principals would receive all of the capital stock of DMCI as consideration therefor. In reality, Defendants fraudulently, unlawfully, and wrongfully intended to convert said funds to their own personal use and to

further the conspiracy itself. Defendants formed a shell company known as DMCI with the intent of transferring all of the valueless capital stock of said shell corporation to Eureka and its principals in consideration for the $10,000,000. In the summer and fall of 1982, Defendants in fact transferred to Eureka and its principals the valueless stock of DMCI in furtherance of the conspiracy itself. Defendants understood and believed that Eureka was backed by the Mafia and that the $10,000,000 was realized through illegal activity of the Mafia. Defendants understood and believed that the Mafia was interested in the transaction in order to launder money obtained through illegal means, and consequently the Mafia would not and could not protest when they discovered that they had been defrauded by Defendants since their entire money laundering scheme would be disclosed.

D. The Creditors Scheme. In 1984, Defendants conspired to unlawfully and wrongfully defraud the creditors of Logan and DMC, and the creditors of DSQ by intentionally and falsely misrepresenting to said creditors that a sale of Logan's assets was being made to an independent company known as Pacific International Equipment Inc., and at arm's length, when in fact said sale was being made to and through an affiliate of Defendants to further the conspiracy itself and for the benefit of Defendants and to the detriment of said creditors. Defendants were acting through a nominee with the intention to personally benefit from said sale so that the conspiracy itself would be furthered and Defendants could acquire the assets of Logan at less than fair market value and avoid responsibility for the fraudulent, unlawful, and wrongful diversion of $8,500,000 in connection with the DRLP Scheme.

E. The Howard Weitzman Scheme. In or about 1982 through 1991, Defendants unlawfully and wrongfully defrauded Howard Weitzman, Esq. ("Weitzman") out of professional legal service, legal fees and expenses by making intentional and false misrepresentations to Weitzman that he would be paid $2,500,000 for his professional services, however, Defendants never intended to pay Weitzman the full amount as represented, but rather, Defendants intended to make partial payments throughout Weitzman's legal representation and to cease all payment once Weitzman's services were fulfilled. Accordingly, Defendants paid Weitzman $1,100,000 for legal services rendered from 1982 through 1986, and refused and failed to satisfy the $1,400,000 balance once Weitzman fulfilled his legal representation even though DeLorean had repeatedly acknowledged in sworn testimony that he had agreed to pay Weitzman $2,500,000. In fact, although Weitzman provided extensive legal services as John Z. DeLorean's lead counsel in the California cocaine trial and the Michigan criminal fraud trial, and saved DeLorean's life by obtaining two acquittals against great odds, Defendants not only refused to fulfill their repeated representations regarding attorney fees and expenses, but John Z. DeLorean instituted a lawsuit against Weitzman for breach of fiduciary duty, over payment of legal fees and negligence, all in furtherance of the conspiracy itself. Previously, DeLorean had testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services through the conclusion of both criminal actions and that no amount of money could repay Weitzman for saving his life and for the job that Weitzman performed for him.

F. The Kenneth McConnell and Howlett, Hartman, Beier & McConnell Scheme. In or about 1983 and 1984, Defendants unlawfully and wrongfully defrauded Kenneth McConnell, Esq. ("McConnell") and Howlett, Hartman, Beier & McConnell ("HHB&M") out of legal services, legal fees and expenses by making intentional and false misrepresentations to McConnell and HHB&M that they would be paid their customary hourly rate for legal services rendered in connection with matters that involved John Z. DeLorean, DMC, and Logan, however, Defendants never intended to pay same in order to further the conspiracy itself and personally benefit. Instead, McConnell and HHB&M withdrew legal representation of Defendants with a substantial balance past due and outstanding which has not been paid to date.

G. The Bill Simon and Hertzog, Calamari and Gleason Scheme. Defendants unlawfully and wrongfully defrauded Bill Simon, Esq. ("Simon") and Hertzog, Calamari and Gleason ("HC&G") out of legal services, legal fees and expenses by making false and intentional misrepresentations to Simon and HC&G that they would be paid their customary hourly rate for legal services rendered in or about 1982 through October 1983 in connection with matters that involved John Z. DeLorean, DMC, and Logan. Defendants never intended to satisfy same, but rather, Defendants only intended to make partial payments and to leave an outstanding balance of $87,556.60 unpaid and past due in order to further the conspiracy itself and personally benefit.

H. The Thomas Kimmerly Scheme. Defendants unlawfully and wrongfully defrauded Thomas Kimmerly, Esq. ("Kimmerly") out of legal services, legal fees, expenses, and fraudulently induced Kimmerly to forebear from exercising his

rights and remedies at law and in equity by making false and intentional misrepresentations that he would be paid his customary hourly rate for legal services rendered to Defendants in connection with a multitude of tax matters and as general counsel for the benefit of Defendants from 1979 through 1992. Defendants never intended to satisfy same, but rather, Defendants only intended to make and have made partial payments in order to further the conspiracy itself and personally benefit even though Kimmerly devoted full time to said legal representation and performed his services admirably and with tremendous expertise. Currently, a balance in the amount of in excess of $3,000,000 is outstanding and past due.

I. The Jack Weinberg, Alan Greenberg, and Graubard Mollen Dannett Horowitz & Pomerantz Scheme. Defendants unlawfully and wrongfully defrauded Jack Weinberg, Esq. ("Weinberg"), Alan Greenberg, Esq. ("Greenberg"), and Graubard Mollen Dannett Horowitz & Pomerantz ("GMDH&P") out of legal services, legal fees and expenses, and fraudulently induced Weinberg, Greenberg, and GMDH&P to forebear from exercising their rights and remedies at law and in equity by making false and intentional misrepresentations that they would be paid their customary hourly rate for legal services rendered to Defendants in or about 1988 through January 1993 in connection with various substantial and complex matters and actions involving Defendants. Defendants never intended to satisfy same, but rather, Defendants only intended to make and have made partial payments in order to further the conspiracy itself and personally benefit. Currently, a balance in excess of $350,000 is outstanding and past due.

J. The Mayer Morganroth and Morganroth & Morganroth Scheme. Defendants unlawful and wrongfully defrauded Plaintiffs into performing and continuing to perform extensive legal services to Defendants, defrauded Plaintiffs out of substantial legal fees and expenses rendered by Plaintiffs on Defendants' behalf, and fraudulently induced Plaintiffs to forebear from exercising their rights and remedies at law and in equity by repeatedly making false, intentional, and malicious misrepresentations to Plaintiffs in order to further the conspiracy itself and to cause Plaintiffs to suffer severe and irreparable damages to Plaintiffs and for the benefit -of Defendants. Defendants never intended to fulfill their fraudulent misrepresentations and have defrauded Plaintiffs out of in excess of $4,400,000 in legal fees and expenses.

44. In furtherance of Defendants, conspiracy and scheme to defraud Plaintiffs, Defendants repeatedly made intentional, malicious, and fraudulent misrepresentations to Plaintiffs which were false and untrue, including, but not limited to, the following in an intentional effort to cause Plaintiffs to rely on said misrepresentations and induce Plaintiffs to perform extensive legal services for the benefit of Defendants, to defraud Plaintiffs out of substantial legal fees and expenses rendered by Plaintiffs on Defendants, behalf, and to fraudulently induce Plaintiffs to forebear exercising their rights and remedies at law and in equity:

A. On numerous occasions throughout November and December 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and January 1993, including, but not limited to, December 5, 1990, December 6, 1990, February 1, 1991, February 5, 1991, February 21, 1991, May 10, 1991, July 31, 1991, December 10, 1991, August 13, 1992, August 19, 1992,

August 26, 1992, October 26, 1992, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, January 28, 1993, and January 29, 1993, Defendants repeatedly, constantly, and continuously represented to Plaintiffs that Defendants would satisfy all legal fees and expenses incurred in connection with legal services rendered by Plaintiffs.

B. On numerous occasions throughout November and December 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and January 1993, including,, but not limited to,, April 25, 1983, December 18, 1985, April 18, 1987, May 12, 1987, May 28, 1987, August 14, 1987, August 26, 1987, September 9, 1987, September 10, 1987, January 31, 1988, January 26, 1989, March 25, 1989, October 3, 1990, October 11, 1990, December 5, 1990, December 6, 1990, February 1, 1991, February 5, 1991, May 10, 1991, July 31, 1991, and December 10, 1991, Defendants repeatedly, constantly, and continuously represented and assured Plaintiffs that the entire outstanding balance of legal fees which had accrued but was unpaid and past due would be fully satisfied as soon as monies, assets, and/or properties became available or unrestrained.

C. On numerous occasions from August 1992 through January 31, 1993, including, but not limited to, August 13, 1992, August 19, 1992, August 26, 1992, October 26, 1992, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, and January 28, 1992, Defendants repeatedly, constantly, and continuously represented, warranted, and assured Plaintiffs that the entire outstanding balance of legal fees and

expenses in the amount of $4,358,689.26 would be satisfied prior to the conclusion of January 1993.

D. On numerous occasions from November 1992 through January 31, 1993, including, but not limited to, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, and January 28, 1993, Defendant, John Z. DeLorean, as Chairman and sole shareholder of Logan, represented and assured Plaintiffs that he personally would assume and satisfy the entire outstanding balance incurred by Logan in the amount of $1,408,689.26 prior to the conclusion of January 1993.

E. On numerous occasions from August 1992 through February 2, 1993, including, but not limited to August 13, 1992, August 19, 1992, August 26, 1992, November 6, 1992, November 7, 1992, November 9, 1992, December 21, 1992, December 24, 1992, January 5, 1992,, January 27, 1992, and January 28,, 1992, Defendant, John Z. DeLorean, not only represented that all amounts would be paid to Plaintiffs, but that he intended to continue retaining Plaintiffs for-the rest of his life.

F. On or about January 29, 1993, Defendants represented and assured Plaintiffs that an agreement to sell a portion of the Bedminster Estate would be consummated on February 2, 1993, and Plaintiffs would be paid all amounts outstanding on said day and date.

45. Plaintiffs relied on Defendants, fraudulent misrepresentations and assurances, and as a direct and proximate result thereof performed extensive legal services on behalf of Defendants, were defrauded out of substantial legal fees and expenses, turned away and rejected numerous other clients and

matters, allowed the sale of John Z. DeLorean's cooperative apartment to close, allowed the Logan sale to close without receiving fees or expenses from Defendants, forebeared on pursuing remedies at law and in equity, and performed additional legal services subsequent to the cooperative apartment sale and the Logan sale in connection with tax matters, two civil cases pending in the State of Michigan, and general advice and consultation regarding business, financial, and real estate matters.

46. In furtherance of the aforementioned activities and schemes to defraud Plaintiffs, the Defendants performed the following acts:

A. On numerous occasions, Defendants used or caused to be used the United States mails in violation of 18 U.S.C. §1341, including, but not limited to the following occasions:

1. May 6, 1986 Affidavit of John Z. DeLorean mailed by DeLorean to Plaintiffs which contained representations regarding legal fees;
2. May 17, 1985 Letter from John Z. DeLorean mailed to Plaintiffs regarding legal entanglements and fees;
3. December 8, 1989 Letter from Logan to Plaintiffs regarding legal entanglements;
4. October 3, 1990 Letter from John Z. DeLorean to the American Arbitration Association, Attention: Jean Walton, and carbon copied to Plaintiffs regarding legal entanglements and fees;
5. September 5, 1990 Letter from Lakevue Funding, Inc. to Logan and John Z. DeLorean, which was mailed by Defendants to Plaintiffs containing representations regarding legal fees;

6. John Z. DeLorean Personal Financial Statement dated September 30, 1990, which was mailed by DeLorean to Plaintiffs containing representations regarding legal entanglements and fees;

7. October 1, 1991 Letter from Defendants to Plaintiffs regarding sale of Logan;

8. Logan Financial Statements, November 30, 1991 (with Independent Auditors' Report Thereon), which was mailed by Defendants to Plaintiffs on February 21, 1991, containing representations regarding legal fees;

9. August 31, 1992 Letter from John Z. DeLorean to Plaintiffs regarding legal fees; and

10. Logan Financial Statements for Month Ended December 31, 1992, which was mailed by Defendants to Plaintiffs, containing representations regarding legal fees.

B. On numerous occasions, Defendants transmitted or caused to be transmitted telefaxes or other writings, signal or signals by wire in violation of 18 U.S.C. §1343, including, but not limited to, the following occasions:

1. Telefaxes sent by Defendants to Plaintiffs virtually every day from November 1982 through February 2, 1993;

2. June 28, 1988 telefax from Logan to Plaintiffs regarding legal entanglements;

3. August 13, 1990 Telefax from John Z. DeLorean to Plaintiffs regarding Lakevue Funding Commitment;

4. October 11, 1990 Telefax from Defendants to Plaintiffs regarding legal fees;
5. September 25, 1991 Telefax from Defendants to Plaintiffs regarding sale of-Logan;
6. October 4, 1991 Telefax from Defendants to Plaintiffs regarding sale of Logan;
7. January 14, 1992 Telefax from Defendants to Plaintiffs regarding sale of Logan;
8. November 9, 1992 Telefax from Defendants to Plaintiffs regarding revised commentary on Wallace deed;
9. January 25, 1993 Telefax from Defendants to Plaintiffs regarding Logan closing audit;
10. February 4, 1993 Telefax from Defendants to Carro, Spanbock, Kaster & Cuiffo regarding Logan closing documents, and transmitted to Plaintiffs;
11. Telephone conversations between Defendants and Plaintiffs virtually every day and often three or more telephone conversations per day from November 1982 through February 2, 1993;
12. Telephone conversation on or about October 3, 1990 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;
13. Telephone conversation on or about December 5, 1990 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

14. Telephone conversation on or about December 6, 1990 between President of Logan and Mayer Morganroth regarding payment of legal fees and expenses;

15. Telephone conversation on or about May 10, 1991 between President of Logan and Mayer Morganroth regarding payment of legal fees and expenses;

16. Telephone conversation on or about May 10, 1991 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

17. Telephone conversation on or about July 31, 1991 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

18. Telephone conversation on or about December 10, 1991 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

19. Telephone conversation on or about August 13, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

20. Telephone conversation on or about August 19, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

21. Telephone conversation on or about August 26, 1992 between John Z. DeLorean and Mayer

Morganroth regarding payment of legal fees and expenses;

22. Telephone conversation on or about October 26, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

23. Telephone conversation on or about November 6, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

24. Telephone conversation on or about November 7, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

25. Telephone conversation on or about November 9, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

26. Telephone conversation on or about December 21, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

27. Telephone conversation on or about December 24, 1992 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

28. Telephone conversation on or about January 4, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

29. Telephone conversation on or about January 5, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

30. Telephone conversation on or about January 27, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

31. Telephone conversation on or about January 28, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

32. Telephone conversation on or about January 29, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses; and

33. Telephone conversation on or about February 1, 1993 between John Z. DeLorean and Mayer Morganroth regarding payment of legal fees and expenses;

C. Defendants knowingly and willfully travelled and caused others to travel in foreign commerce with the intent to facilitate and carry on obtaining money, properties, expenses, assets, receivables, and services under false pretenses, an unlawful activity in violation of Michigan Compiled Laws Sections, and in the Eastern District of Michigan and elsewhere to knowingly and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity in violation of 18 U.S.C. §1952.

D. Defendants furthered the conspiracy, enterprise, and pattern of racketeering under 18 U.S.C. §371 by obtaining money and valuable consideration under false pretenses.

E. Defendants furthered the conspiracy, enterprise, and pattern of racketeering under 18 U.S.C. §1956 through the laundering of monetary instruments.

F. Defendants furthered the conspiracy, enterprise, and pattern of racketeering under 18 U.S.C. §1957 by engaging in monetary transactions in property derived from unlawful activity.

50. The activities described in the preceding paragraphs constituted a "pattern of racketeering activity" as that phrase is used in 18 U.S.C. §1961(l) and (5) et seq.; and that said Defendants have committed numerous acts of racketeering, including acts of mail fraud, wire fraud, obtaining money and valuable consideration under false, pretenses and money laundering in a pattern of racketeering with the intent to defraud Plaintiffs and others by a scheme to deprive the Plaintiffs and others of legal fees, costs, monies, legal services,, properties, assets, receivables, and rights and remedies at law and in equity to the benefit of the Defendants, the enterprise, and the members of the enterprise.

51. Defendants used the value, income, and benefits derived from the aforementioned patterns of racketeering activity and constituted an enterprise engaged in activities which affect interstate and foreign commerce in violation of 18 U.S.C. §1962(l) and that said enterprise is constituted and was constituted when individuals, corporations, and associations in fact acted as a union in order to defraud Plaintiffs and other third parties of legal fees, expenses, services, assets, properties, receivables, monies, and rights and remedies at law and in equity.

52. Said enterprise continued on its course of conduct as aforementioned in order to fraudulently and wrongfully deprive Plaintiffs and other third parties of legal fees, expenses, services, assets, monies, properties, receivables, and rights and remedies at law and in equity to the advantage of Defendants so as to cause Plaintiffs, among numerous other third parties, including, but not limited to, DRLP, DMCL and its shareholders, DMC, Eureka, the Mafia, creditors of Logan, creditors of DMC, DSQ and its creditors, Weitzman, McConnell, Simon, HC&G, Kimmerly, Weinberg, Greenberg, and GMDH&P to be deprived of valuable assets, properties, receivables, fees and expenses, monies, services, and rights and remedies at law and in equity for the benefit of Defendants and to continue the enterprise.

53. The enterprise and the individuals, corporations, partnerships, and associations in fact which were party to the enterprise, all directly and/or indirectly benefitted from the unlawful, fraudulent, and wrongful conduct of the enterprise, and the Defendants continued through said enterprise to defraud Plaintiffs and others such as DRLP, DMCL and its shareholders, DMC, Eureka, the Mafia, creditors of Logan, creditors of DMC, DSQ and its creditors, Weitzman, McConnell, Simon, HC&G, Kimmerly, Weinberg, Greenberg, and GMDH&P. Such conduct violated 18 U.S.C. §1961(4) et seq. Defendants conspired for the unlawful, fraudulent, and wrongful purpose to receive legal services, fees, costs, monies, properties, assets, receivables, and rights and remedies at law and in equity derived directly and/or indirectly from the pattern of racketeering activity by using, investing, and directing (directly and/or indirectly) in the establishment and operation of an enterprise engaged in activities which affect interstate and foreign commerce.

54. Through a pattern of racketeering activity as described in the preceding paragraphs, Defendants have acquired and maintained, directly and indirectly, an interest in or control of the enterprise.

55. The enterprise as described in the preceding paragraphs engaged, participated, and involved itself in the activities of which affect the interstate or foreign commerce as that phrase is used in 18 U.S.C. §1962(b).

56. Defendants received income, monies, assets, services, and properties which were derived directly and/or indirectly from the pattern of racketeering activity in which the Defendants have participated as a principal within the meaning of Section 2, Title 18 of the United States Code.

57. Defendants used and/or invested directly and/or indirectly parts of said income, monies, assets, services, and properties and the proceeds thereof to acquire, maintain, establish and/or operate the enterprise when engaged in the activities of which affect interstate or foreign commerce as prohibited under 18 U.S.C. §1962(a).

58. Defendants have been and are employed and associated in fact with an enterprise which has been and is engaging and participating in activities which affect interstate commerce. Defendants have been and are conducting and participating directly and indirectly in the unlawful, fraudulent, and wrongful misconduct of such enterprises through a pattern of racketeering as prohibited in 18 U.S.C. §1962(c).

59. Defendants have violated 18 U.S.C. §1962(d) by virtue of conspiring to violate the provisions of subsections (a), (b), and/or (c) of 18 U.S.C. §1962.

60. Defendants along with others affected a combination of individuals and groups of individuals, corporations, and associations in fact to form the enterprise and further that Defendants created and established a conspiratorial association formed for the purpose of carrying out unlawful, fraudulent, and wrongful acts constituting an enterprise and the performance of such acts constituted a pattern of racketeering activity. Said enterprise was commenced in 1978 and continued thereafter against DRLP, DMCL and its shareholders, DMC, Eureka, the Mafia, creditors of Logan, creditors of DMC, DSQ and its creditors, Weitzman, McConnell, Simon, HC&G, Kimmerly, Weinberg, Greenberg, and GMDH&P, and continued thereafter against Plaintiffs through February 2, 1993, and still does continue. Said enterprise has an existence that continues beyond that which was necessary to commit the initial alleged schemes and predicate racketeering offenses and that said enterprise has a purpose and a structure beyond the schemes and predicate acts as alleged herein.

61. All of the aforementioned activities by the Defendants were intentionally undertaken with full knowledge and appreciation of the result.

62. Plaintiffs were injured by reason of the aforementioned activities, schemes to defraud, the violations of Federal Law, and the patterns of racketeering activity to wit:

A. Plaintiffs were fraudulently, unlawfully, and wrongfully induced to perform extensive legal services for Defendants, benefit.

B. Plaintiffs were fraudulently, unlawfully, and wrongfully induced to turn away and reject numerous legal matters, clients, and actions in order to accommodate Defendants.

C. Plaintiffs were fraudulently, unlawfully, and wrongfully induced to forebear from exercising their rights and remedies at law and in equity, and to continue performing extensive legal services for the benefit of Defendants.

D. Loss of income, past, present, and for an indefinite future.

E. Loss of fees, and expenses advanced at the request and on behalf of Defendants.

F. Humiliation, embarrassment, pain and suffering, past, present, and for an indefinite future.

G. Treble damages.

H. Interest, costs, and attorney fees.

WHEREFORE, Plaintiffs demand judgment be entered against Defendants and in favor of Plaintiffs in the amount of $10,400,000 in damages and trebled as allowed under the RICO statute, which total $31,200,000 in damages plus interest, costs, and attorney fees.

COUNT II

Fraudulent Misrepresentations

(Defendants, Logan and John Z. DeLorean)

63. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 62 of this Complaint as if restated herein word for word.

64. Defendants, John Z. DeLorean and Logan, conspired to defraud Plaintiffs out of legal fees, legal services, expenses paid on behalf of Defendants, and rights and remedies at law and in equity. Defendants acted jointly and in concert in committing the complained of acts.

65. Defendants jointly and intentionally made false, malicious, and willful misrepresentations to Plaintiffs as set forth in paragraphs 43-45 of this Complaint.

66. Defendants knew that said misrepresentations were false when made to Plaintiffs or were made by Defendants with reckless disregard for the truth as positive assertions.

67. Plaintiffs intentionally and maliciously made said false misrepresentations to Plaintiffs in order to induce Plaintiffs to rely to their detriment as Plaintiffs did.

68. Plaintiffs reasonably relied to their detriment upon Defendants' malicious and fraudulent misrepresentation by providing and continuing to provide legal services, by advancing and continuing to advance expenses for Defendants, benefit and by forebearing from taking action to obtain payment of fees and expenses.

69. Defendants' fraudulent misrepresentations were made maliciously, willfully, and wantonly, so that Plaintiffs are entitled and should recover exemplary damages from Defendants.

70. These acts and omissions were distinct and separate from or in addition to express or implied contractual obligations owed by Defendants to Plaintiffs.

71. As a direct, natural, proximate and foreseeable consequence of the foregoing, Plaintiffs have suffered damages for which Plaintiffs are entitled to recover, including, but not limited to, lost income, profits, fees, expenses, business, pain and suffering, exemplary and punitive damages.

WHEREFORE, Plaintiffs demand judgment be entered against Defendants and in Plaintiffs' favor in the amount in excess of $10,400,000, plus interest, costs, and attorney fees.

COUNT III

Breach of Express Contract by Defendant, Logan

72. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 71 of this Complaint as if restated herein word for word.

73. In or about November 1982, Defendant, Logan, entered into an agreement with Mayer Morganroth to retain him to render legal advice and services ("Agreement").

74. Thereafter, Defendant, Logan, repeatedly reaffirmed said Agreement through February 2, 1993, and further agreed to retain Mayer Morganroth and his law partnership, Morganroth & Morganroth, in or about January 1989 and thereafter through February 2, 1993.

75. Pursuant to the agreement and reaffirmation thereof, Defendant, Logan, agreed to pay Plaintiffs for all work performed on their behalf by Plaintiffs upon Plaintiffs' customary rate for legal services, plus reimbursement for expenses.

76. Initially, Plaintiffs and Defendant, Logan, agreed that Plaintiffs would be compensated upon Plaintiffs, customary hourly rate for all legal services rendered except on a contingent basis for services performed in connection with the action entitled John Z. DeLorean and Logan v. Cork Gully, et al (one of the multitude of cases handled by Plaintiffs), however, on October 11, 1990 and thereafter, Plaintiffs and Defendant, Logan, agreed that Plaintiffs also would be compensated for all services performed in connection with the Cork Gully case upon Plaintiffs' customary hourly rate.

77. The Agreement was negotiated and entered into in the Eastern District of Michigan, Southern Division.

78. The Agreement was substantially performed in the Eastern District of Michigan, Southern Division.

79. Defendant, Logan, travelled to the Eastern District of Michigan, Southern Division in connection with the Agreement.

80. Pursuant to the Agreement, Plaintiffs performed extensive legal services on behalf of Defendant, Logan, from on or about November 1982 through and including February 2, 1993.

81. Plaintiff rendered periodic statements to Defendant, Logan, for extensive legal services rendered and expenses incurred.

82. Defendant, Logan, sent partial payments to Plaintiffs in Michigan for the legal services which Plaintiffs rendered on Defendant, Logan's, behalf.

83. Through February 2, 1993, Defendant, Logan, never complained to Plaintiffs about the services rendered by them to Defendant, Logan.

84. Defendant, Logan, received statements from Plaintiffs without protest or discrepancy.

85. Defendant, Logan, affirmatively has acknowledged on numerous occasions that an outstanding and past due balance is owed by them to Plaintiffs in the amount of $1,408,689.26 for legal services and expenses.

86. By virtue of the foregoing, there is now outstanding and past due and owing from Defendant, Logan, to Plaintiffs a balance of $1,408,689.26 which sum remains unpaid, despite due demand.

87. By virtue of the foregoing, Defendant, Logan, has breached the Agreement thereby causing Plaintiffs to suffer

damages in the amount in excess of $1,408,689.26, plus interest, costs, and attorney fees.

88. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages which Plaintiffs are entitled to recover, including, but not limited to, lost income, business, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, Logan, and in Plaintiffs, favor in an amount in excess of $1,408,689.26 plus interest, costs, and attorney fees.

COUNT IV

Breach of Express Contract by Defendant John Z. DeLorean

89. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 88 of this Complaint as if restated herein word for word.

90. In or about November 1982, Defendant, John Z. DeLorean, entered into an agreement with Mayer Morganroth to retain him to render legal advice and services ("Agreement").

91. Thereafter, Defendant, John Z. DeLorean, reaffirmed said Agreement through February 2, 1993, and further agreed to retain Mayer Morganroth and his law partnership, Morganroth & Morganroth, in or about January 1989 and thereafter through February 2, 1993.

92. Initially, Plaintiffs and Defendant, John Z. DeLorean, agreed that Plaintiffs would be compensated upon Plaintiffs, customary hourly rate for all legal services rendered except on a contingent basis for services performed in connection with the action entitled John Z. DeLorean and Logan v. Cork Gully, et al. (one of the multitude of cases handled by Plaintiffs), however, on October 11, 1990 and thereafter, Plaintiffs and Defendant, John

Z. DeLorean, agreed that Plaintiffs also would be compensated for all services performed in connection with the Cork Gull case upon Plaintiffs, customary hourly rate.

93. Pursuant to the Agreement and reaffirmation thereof, Defendant, John Z. DeLorean, agreed to pay Plaintiffs for all work performed on his behalf by Plaintiffs upon Plaintiffs, customary rate for legal services, plus reimbursement for expenses.

94. The Agreement was negotiated and entered into in the Eastern District of Michigan, Southern Division.

95. Defendant, John Z. DeLorean, travelled to the Eastern District of Michigan, Southern Division in connection with the Agreement.

96. Pursuant to the Agreement, Plaintiffs performed extensive services on behalf of Defendant, John Z. DeLorean, from on or about November 1982 through and including February 2, 1993.

97. Plaintiffs rendered periodic statements to Defendant, John Z. DeLorean, for extensive legal services rendered and expenses incurred.

98. Defendant, John Z. DeLorean, sent partial payments to Plaintiffs in Michigan for the legal services which Plaintiffs rendered on Defendant, John Z. DeLorean's, behalf.

99. Through February 2, 1993, Defendant, John Z. DeLorean, never complained to Plaintiffs about the services rendered by them to Defendant, John Z. DeLorean.

100. Through February 2, 1993, Defendant, John Z. DeLorean, repeatedly made statements, representations, and comments to numerous individuals that Plaintiffs saved his life

and his assets, and that Mayer Morganroth was the best and finest attorney.

101. Through February 2, 1993, Defendant, John Z. DeLorean, referred clients to Plaintiffs on the basis that Plaintiffs saved his life and his assets and gained him assets he would not have had but for Morganroth's efforts, and that no one could do the job like Mayer Morganroth.

102. Defendant, John Z. DeLorean, received statements from Plaintiffs without protest or discrepancy.

103. Defendant, John Z. DeLorean, affirmatively has acknowledged on numerous occasions, including, but not limited to, testimony under oath, letters, documents, financial statements, and certifications to Plaintiffs, courts, and arbitrators that an outstanding and past due balance was owed by him to Plaintiffs in the amount of $2,200,000 for legal services and expenses as of October 3, 1990.

104. Subsequent to October 3, 1990, Plaintiffs have rendered additional legal services and expenses to Defendant, John Z. DeLorean in the amount of $750,000.

105. On or about numerous occasions as delineated in paragraph 23 herein, Defendant, John Z. DeLorean, acknowledged an outstanding balance in the amount of $2,520,819 as of November 1990, $2,613,380 as of July 16, 1990, $2,622,230 as of July 15, 1991, $2,660,310 as of December 2, 1991, $2,897,855 as of October 19, 1992, $2,927,905 as of December 11, 1992, and $2,950,000 as of February 1, 1993.

106. On or about numerous occasions, including, but not limited to, August 13, 1992, August 19, 1992, August 26, 1992, October 26, 1992, November 6, 1992, November 7, 1992,

November 9, 1992, December 21, 1992, December 24, 1992, January 4, 1993, January 5, 1993, January 27, 1993, January 28, 1993, January 29, 1993, and February 1, 1993, Defendants, John Z. DeLorean and Logan, acknowledged an outstanding balance in the amount of $1,408,689.26 incurred on behalf of Logan.

107. On or about January 5, 1993, the assets of Logan were sold for approximately $16,500,000.

108. In connection with the sale of Logan assets, Defendant, John Z. DeLorean, as Chairman and sole shareholder of Logan, agreed, represented, warranted, and acknowledged that he personally was responsible for the $1,408,689.26 past due and owing to Plaintiffs since said amount was treated as subordinated debt in the sale of Logan on January 5, 1993, and DeLorean was to receive the proceeds of the Logan sale subject to said debt and obligation.

109. On or about numerous occasions, including, but not limited to, the instances delineated in paragraph 98 herein, Defendant, John Z. DeLorean, agreed and acknowledged that the $2,950,000 outstanding balance plus the $1,408,689.26 outstanding balance would be completely satisfied and paid in full to Plaintiffs prior to the conclusion of January 1993.

110. By virtue of the foregoing, there is now outstanding and past due and owing from Defendant, John Z. DeLorean, to Plaintiffs a balance of $4,358,689.26, which sum remains unpaid, despite due demand.

111. By virtue of the foregoing, Defendant, John Z. DeLorean, has breached the Agreement thereby causing Plaintiffs to suffer damages in an amount in excess of $4,358,689.26, plus interest, costs, and attorney fees.

112. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages for which Plaintiffs are entitled to recover, including, but not limited to, lost income, profits, business, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, John Z. DeLorean, and in Plaintiffs, favor in an amount in excess of $4,358.689.26, plus interest, costs, and attorney fees.

COUNT V

Breach of Implied Contract by Defendant, Logan

113. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 104 of this Complaint as if restated herein word for word.

114. Plaintiffs performed extensive legal services and paid substantial expenses for Defendant, Logan's, benefit and/or at Defendant, Logan's, request.

115. Defendant, Logan, has refused and failed to pay Plaintiffs for the reasonable and agreed value of the extensive legal services rendered and to reimburse Plaintiffs for the expenses paid.

116. Defendant, Logan, breached their implied contractual obligations owed to Plaintiffs by failing to pay to Plaintiff the fees and expenses in connection with the extensive legal services rendered as agreed in the amount of $1,408,689.26.

117. As a direct, proximate, natural, and foreseeable consequence of the foregoing, Plaintiffs have suffered actual and special damages in an amount in excess of $1,408,689.26, including, but not limited to, loss of fees, business, expenses, and income, and interest thereon plus costs and attorney fees.

118. Plaintiffs are entitled to recover exemplary or punitive damages since Defendant Logan's, actions were malicious or in willful, gross or reckless disregard of Plaintiffs, rights, interests and/or expectancies.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, Logan, and in Plaintiffs' favor in an amount in excess of $1,408,689.26, plus interest, costs, and attorney fees.

COUNT VI

Breach of Implied Contract by Defendant, John Z. DeLorean

119. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 118 of this Complaint as if restated herein word for word.

120. Plaintiffs performed extensive legal services and paid substantial expenses for Defendant, John Z. DeLorean's, benefit and/or at Defendant, John Z. DeLorean's, request.

121. Defendant, John Z. DeLorean, has refused and failed to pay Plaintiffs for the reasonable and agreed value of the extensive legal services rendered and to reimburse Plaintiffs for the expenses paid.

122. Defendant, John Z. DeLorean, breached his implied contractual obligations owed to Plaintiffs by failing to pay to Plaintiffs the fees and expenses in connection with the extensive legal services rendered as agreed in the amount of $4,358,689.26.

123. As a direct, proximate, natural, and foreseeable consequence of the foregoing, Plaintiffs have suffered actual and special damages in an amount in excess of $4,358,689.26, including, but not limited to, loss of fees, expenses, and income, and interest thereon, plus costs and attorney fees.

124. Plaintiffs are entitled to recover exemplary or punitive damages since Defendant, John Z. DeLorean's, actions were malicious or in willful, gross or reckless disregard of Plaintiffs, rights, interests and/or expectancies.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, John Z. DeLorean, and in Plaintiffs' favor in an amount in excess of $4,358,689.26, plus interest, costs, and attorney fees.

COUNT VII

Account Stated (Defendant Logan)

125. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 124 of this Complaint as if restated herein word for word.

126. Plaintiffs provided extensive legal services to Defendant, Logan, and paid expenses on Defendant, Logan's, behalf from November 1982 through and including February 2, 1993, with those services and expenses being invoiced by telephone, oral discussion, and in writing on numerous occasions.

127. Based on Plaintiffs' business relationship with Defendant, Logan, and Plaintiffs, invoices by telephone, oral discussions, and in writing, an account was stated between Plaintiffs and Defendant, Logan, and upon such account a balance after payments made by Defendant, Logan, was found to be outstanding and due Plaintiffs in the amount of $1,408,689.26.

128. The aforementioned statements of account were not only mailed to Defendant, Logan, on numerous occasions, but were orally discussed with Defendant on numerous occasions as well.

129. Defendant, Logan, has received the aforementioned statements and retained same, and have acknowledged and

confirmed the outstanding baiance as stated. The foregoing allegations are supported by the Affidavit of Mayer Morganroth, which is attached hereto and incorporated by reference.

130. Despite Plaintiffs repeated demands for payment, Defendant, Logan, has failed, refused, and neglected to pay for the extensive legal services rendered and expenses paid on behalf of Defendant, Logan.

131. By virtue of the foregoing, Defendant, Logan, presently is indebted to Plaintiffs on said account stated in the amount of $1,408,689.26.

132. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages which Plaintiffs are entitled to recover, including, but not limited to, lost income, business, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, Logan, and in Plaintiffs, favor in an amount in excess of $1,408,689.26, plus interest, costs, and attorney fees.

COUNT VIII

Account Stated (Defendant John Z. DeLorean)

133. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 132 of this Complaint as if restated herein word for word.

134. Plaintiffs provided extensive legal services to Defendant, John Z. DeLorean, and paid expenses on Defendant, John Z. DeLorean's, behalf from November 1982 through and including February 2, 1993, with those services and expenses being invoiced by telephone, oral discussion, and in writing on numerous occasions.

being invoiced by telephone, oral discussion, and in writing on numerous occasions.

135. Based on Plaintiffs' business relationship with Defendant, John Z. DeLorean, and Plaintiffs, invoices by telephone, oral discussions, and in writing, an account was stated between Plaintiffs and Defendant, John Z. DeLorean, and upon such account a balance after payments made by Defendant, John Z. DeLorean, was found to be outstanding and due Plaintiffs in the amount of $4,358,689.26.

136. The aforementioned statements of account were not only mailed to Defendant, John Z. DeLorean, on numerous occasions, but were orally discussed with Defendant on numerous occasions as well.

137. Defendant, John Z. DeLorean, has received the aforementioned statements and retained same, and has acknowledged and confirmed the outstanding balance as stated. The foregoing allegations are supported by the Affidavit of Mayer Morganroth, which is attached hereto and incorporated by reference.

138. Despite repeated demands for payment by Plaintiffs, Defendant, John Z. DeLorean, has failed, refused, and neglected to pay for the extensive legal services rendered and expenses paid on behalf of Defendant, John Z. DeLorean.

139. By virtue of the foregoing, Defendant, John Z. DeLorean, presently is indebted to Plaintiffs on said account stated in the amount of $4,358,689.26

140. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages which Plaintiffs are entitled to recover including, but not limited to, lost income, business, fees, and expenses.

an amount in excess of $4,358,689.26, plus interest, costs, and attorney fees.

COUNT IX

Quantum Meruit (Defendant Logan)

141. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 140 of this Complaint as if restated herein word for word.

142. When Plaintiffs rendered legal services to Defendant, Logan, and paid expenses on Defendant, Logan's behalf, Plaintiff did so with the expectation of being compensated.

143. Defendant, Logan, at all times was aware that Plaintiffs intended to be compensated based upon their customary hourly rate for services rendered to Defendant, Logan, and that Plaintiffs intended to be reimbursed for expenses they incurred on Defendant, Logan's behalf.

144. Plaintiffs have provided extensive legal services to Defendant, Logan, and paid expenses on Defendant, Logan's behalf, in the amount of $1,408,689.26, which have not been satisfied to date.

145. By virtue of the foregoing, Defendant, Logan, owes Plaintiffs the sum of $1,408,689.26, plus interest, costs, and expenses.

146. Defendant, Logan, has appropriated the benefits of Plaintiffs, services and payment of expenses without adequately compensating Plaintiffs, and should be required to pay Plaintiffs the value of same.

147. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages which Plaintiffs

are entitled to recover, including, but not limited to, lost income, business, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, Logan, and in Plaintiffs, favor in an amount in excess of $1,408,689.26, plus interest, costs, and attorney fees.

COUNT X

Quantum Meruit (Defendant John Z. DeLorean)

148. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 147 of this Complaint as if restated herein word for word.

149. When Plaintiffs rendered legal services to Defendant, John Z. DeLorean, and paid expenses on John Z. DeLorean Is behalf, Plaintiff did so with the expectation of being compensated.

150. Defendant, John Z. DeLorean, at all times was aware that Plaintiffs intended to be compensated based upon their customary hourly rate for services rendered to Defendant, John Z. DeLorean, and that Plaintiffs intended to be reimbursed for expenses they incurred on Defendant, John Z. DeLorean's, behalf.

151. Plaintiffs have provided extensive legal services to Defendant, John Z. DeLorean,, and paid expenses on Defendant, John Z. DeLorean's behalf, in the amount of $4,358,689.26, which have not been satisfied to date.

152. By virtue of the foregoing, Defendant, John Z. DeLorean, owes Plaintiffs the sum of $4,358,689.26, plus interest, costs, and expenses.

153. Defendant, John Z. DeLorean, has appropriated the benefits of Plaintiffs, services and payment of expenses without

adequately compensating Plaintiffs, and should be required to pay Plaintiffs the value of same.

154. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages which Plaintiffs are entitled to recover, including, but not limited to, lost income, business, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, John Z. DeLorean, and in Plaintiffs, favor in an amount in excess of $4,358,689.26, plus interest, costs, and attorney fees.

COUNT XI

Unjust Enrichment (Defendant Logan)

155. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 154 of this Complaint as if restated herein word for word.

156. Plaintiffs, by providing Defendant, Logan, with extensive legal services and paying expenses on behalf of Defendant, Logan, conferred a valuable benefit upon Logan worth at least $1,408,689.26.

157. Defendant, Logan, therefore is indebted to Plaintiffs as a result of the services it received and expenses Plaintiffs paid on Logan's behalf, such benefit totaling at least $1,408,689.26.

158. Defendant, Logan, has been unjustly enriched by appropriating and benefitting from Plaintiffs' services and payment of expenses but not adequately compensating Plaintiffs therefor.

159. Although Plaintiffs have made repeated demand upon Defendant, Logan, to pay the value of the benefit conferred upon Logan, it has failed and refused to do so.

160. Plaintiffs are entitled to recover the amount by which Defendant, Logan, has been unjustly enriched by failing to pay for Plaintiffs, services and the expenses paid by Plaintiffs on Logan's behalf.

161. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages for which Plaintiffs are entitled to recover, including, but not limited to, lost income, profits, fees, and expenses.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, Logan, and in Plaintiffs, favor in an amount in excess of $1,408,689.26, plus interest, costs, and attorney fees.

COUNT XII

Unjust Enrichment (Defendant John Z. DeLorean)

162. Plaintiffs hereby incorporate by reference and reallege paragraphs 1 through 161 of this Complaint as if restated herein word for word.

163. Plaintiffs, by providing Defendant, John Z. DeLorean, with extensive legal services and paying expenses on behalf of Defendant, John Z. DeLorean,, conferred a valuable benefit upon John Z. DeLorean worth at least $4,358,689.26.

164. Defendant, John Z. DeLorean, therefore is indebted to Plaintiffs as a result of the services it received and expenses Plaintiffs paid on John Z. DeLorean's behalf, such benefit totaling at least $4,358,689.26.

165. Defendant, John Z. DeLorean, has been unjustly enriched by appropriating and benefitting from Plaintiffs, services and payment of expenses but not adequately compensating Plaintiffs therefor.

166. Although Plaintiffs have made repeated demand upon Defendant, John Z. DeLorean, to pay the value of the benefit conferred upon John Z. DeLorean, it has failed and refused to do so.

167. Plaintiffs are entitled to recover the amount by which Defendant, John Z. DeLorean, has been unjustly enriched by failing to pay for Plaintiffs, services and the expenses paid by Plaintiffs on John Z. DeLorean's behalf.

168. As a direct, natural, and proximate consequence of the foregoing, Plaintiffs have suffered damages for which Plaintiffs are entitled to recover, including, but not limited to, lost income, profits, fees, expenses, and business.

WHEREFORE, Plaintiffs demand judgment be entered against Defendant, John Z. DeLorean, and in Plaintiffs, favor in an amount in excess of $4,358,689.26, plus interest, costs, and attorney fees.

Respectfully submitted,

MORGANROTH & MORGANROTH

/s/ Mayer Morganroth
MAYER MORGANROTH (P17966)
In *Pro Se* and on Behalf of
MORGANROTH & MORGANROTH
2000 Town Center, Suite 2000
Southfield, MI 48075
(313) 355-3084

Dated: February 24, 1993

JURY DEMAND

NOW COME the above-named Plaintiffs, MORGANROTH & MORGANROTH and MAYER MORGANROTH, by and through their attorney, Mayer Morganroth (in pro se), and hereby demand a trial by jury of the issues herein.

Respectfully submitted,

MORGANROTH & MORGANROTH

/s/ Mayer Morganroth
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Dated: February 24, 1993

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Motion To Dismiss or Stay Entire Instant Action, or Alternatively to Dismiss Count I From The Complaint, with Brief

District Court Case №. 93-CV-70848
Filed May 6, 1993

Pages D-1 thru D-49

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**May 6, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

MOTION TO DISMISS OR STAY ENTIRE INSTANT ACTION, OR ALTERNATIVELY TO DISMISS COUNT I FROM THE COMPLAINT IN THE INSTANT ACTION FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY FOR MORE DEFINITE STATEMENT OF COUNT I OF THE COMPLAINT IN THE INSTANT ACTION

Defendants, by their attorneys Freidberg Law Corporation, move this Honorable Court to dismiss or stay the entire instant action, or alternatively to dismiss Count I from the Complaint in the instant action for failure to state a claim, or alternatively for a more definite statement of Count I of the Complaint in the instant action, and in support of said motion, state the following:

1. On or about February 2, 1993, JOHN Z. DELOREAN (hereinafter "DELOREAN") and Logan Manufacturing Company (hereinafter "Logan") filed a legal action in the Supreme Court of the State of New York (hereinafter "New York Action") against attorneys MAYER MORGANROTH, MORGANROTH & MORGANROTH (hereinafter collectively as "MORGANROTH") and other New York attorneys alleging legal malpractice, negligence, fraud, breach of fiduciary duties and breach of contract related to the attorneys' handling of certain legal matters (hereinafter "contested matters"). The Summons and Complaint in said New York Action were personally served on MAYER MORGANROTH and MORGANROTH & MORGANROTH on February 9, 1993.

2. On or about February 25, 1993, MAYER MORGANROTH and MORGANROTH & MORGANROTH filed their complaint in the instant action against JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. (hereinafter "ECCLESIASTES"), bringing various claims which are all essentially one allegation of non-payment of attorney fees for services rendered in the aforementioned "contested matters" and other matters. The disputes and claims between DELOREAN and MORGANROTH thus arise from the same transactions and events. The filing by DELOREAN and Logan in the New York court and by MORGANROTH in this Honorable Court has created a circumstance in which the New York court and this Honorable Court have concurrent jurisdiction over the disputes between the parties.

3. This Honorable Court may exercise its discretion to dismiss or stay the entire instant action and should do so on the grounds that this federal forum is extremely inconvenient to defendants DELOREAN and ECCLESIASTES and to many of the witnesses who will be called in this case; that the New York

parties' resources, prevent res judicata/collateral estoppel gamesmanship, and avoid piecemeal litigation; that the complaint in the New York Action was filed before the complaint in the instant action; that DELOREAN/Logan's New York claims of professional negligence, fraud and breach of contract, and MORGANROTH's federal claims of nonpayment of fees are really state law claims, except MORGANROTH's RICO claim which can be adjudicated by the New York court; that the New York Action is capable of adjudicating and protecting all of the legal rights claimed by Plaintiffs in the instant action; that this Honorable Court and the New York court have concurrent jurisdiction over all the claims raised by Plaintiffs in the instant action; and that MORGANROTH's Complaint in this forum is a reactive defense tactic designed only to vex and harass DELOREAN by forcing DELOREAN to defend this lawsuit nearly 700 miles from his home.

4. If this Honorable Court denies the instant motion to dismiss or stay, then this Honorable Court has the power pursuant to Federal Rule of Procedure, Rule 12 (b) (6) to dismiss Count I from the complaint in the instant action on the basis that Count I fails to state a claim upon which relief can be granted. Such dismissal of Count I is appropriate on the basis that the Complaint fails to identify the RICO "enterprise"; that the Complaint fails to plead facts to establish that defendants violated the RICO statutes; that the Complaint fails to plead facts showing that Plaintiffs' injuries, if any, were caused by a violation of the RICO statutes; that the Complaint fails to adequately plead racketeering activity predicate acts; and that the Complaint fails to adequately plead a "pattern" of racketeering activity.

5. If this Honorable Court elects not to dismiss or stay the entire instant action, nor to dismiss Count I for failure to state a claim, than this Honorable Court has the power pursuant to

Federal Rules of Civil Procedure, Rule 12(e) to grant a motion for more definite statement of Count I of the complaint in the instant action. Granting of the instant motion is appropriate on the ground that Count I is so vague and ambiguous that Defendants cannot frame a responsive pleading. The defects are that the Complaint fails to identify the RICO "enterprise"; that the Complaint fails to adequately plead racketeering activity predicate acts; that the Complaint fails to adequately plead a "pattern" of racketeering activity; that the Complaint fails to plead facts to establish that defendants violated the RICO statutes; and that the Complaint fails to plead facts showing that Plaintiffs' injuries, if any, were caused by a violation of the RICO statutes.

6. Pursuant to the Local Rules of the United States District Court for the Eastern District of Michigan, Rule 7.1(a), on April 29, 1993, Daniel Boone of the Freidberg Law Corporation, attorneys for the moving parties, conferred with Mayer Morganroth, attorney for responding parties, for the purpose of explaining the nature of the instant motion and its legal basis, and to seek concurrence from Mr. Morganroth to the relief sought by the instant motion. Mr. Morganroth responded that he would not concur and stipulate to the relief sought, and that he intended to oppose the instant motion. Since the parties are unable to agree and stipulate to the relief sought, the moving party brings the instant motion.

WHEREFORE, Defendants pray that this Honorable Court enter an order dismissing or staying the entire instant action, or alternatively enter an order dismissing Count I from the complaint in the instant action, or alternatively enter an order for a more definite statement of Count I of the complaint in the instant action and granting any other relief to Defendants as may be appropriate under the circumstances.

a more definite statement of Count I of the complaint in the instant action and granting any other relief to Defendants as may be appropriate under the circumstances.

Respectfully submitted,

FREIDBERG LAW CORPORATION

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DATED: May 5, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS OR STAY ENTIRE INSTANT ACTION, OR ALTERNATIVELY TO DISMISS COUNT I FROM THE COMPLAINT IN THE INSTANT ACTION FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY FOR MORE DEFINITE STATEMENT OF COUNT I OF THE COMPLAINT IN THE INSTANT ACTION

STATEMENT OF ISSUES

Pursuant to Local Rules of the United States District Court for the Eastern District of Michigan, Rule 7.1(b) , the moving parties hereby set forth a statement of the issues presented:

1. Does this Court have discretion to dismiss or stay the entire instant action in light of the existence of a concurrent New York State Court action?

2. If this Court has such discretion, do the factors which must be considered in the exercise of such discretion warrant such dismissal or stay?

3. If this Court elects not to dismiss the entire instant action, should this Court dismiss Count I from the Complaint in the instant action for failure to state a claim?

4. If this Court elects not to dismiss or stay the entire instant action nor to dismiss Count I from the Complaint in the instant action for failure to state a claim, should this Court order a more definite statement of Count I of the Complaint in the instant action?

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I. FACTS

Plaintiffs MAYER MORGANROTH and MORGANROTH & MORGANROTH (hereinafter collectively "MORGANROTH") provided legal advice and legal services to Defendant JOHN Z. DELOREAN (hereinafter "DELOREAN") and his companies, Logan Manufacturing Company (hereinafter "Logan") and Defendant ECCLESIASTES 9:10-11-12, INC. (hereinafter "ECCLESIASTES") for a period of over ten years, from November 1982 to February 1993, in connection with a multitude of matters. (See Morganroth Complaint filed in the instant action (hereinafter "Morganroth Complaint"), at ¶¶9-10). During said period from 1982 to 1993, DELOREAN had residences in New York City and New Jersey and most of the communications between MORGANROTH and DELOREAN regarding legal matters were communicated to DELOREAN in New York City or New Jersey. (See DeLorean Complaint filed in the concurrent New York Action, Exhibit "A" hereto (hereinafter Exhibit "A"), at ¶¶23A,C,D; 30D; 39A-D; 40; 42-43; 47-48; 50; 77).

By 1981, DeLorean Motor Car Limited (hereinafter "DMCL") was manufacturing motor cars in Northern Ireland. Shortly thereafter, the government of the United Kingdom forced DMCL into receivership and DMCL was replaced, by operation of law, by an entity known as DSQ Property Company Limited (hereinafter "DSQ"). DSQ was the successor of DMCL. (Exhibit "A" at ¶16).

DSQ subsequently initiated a legal action in London, England (hereinafter "United Kingdom Action") in January 3 1986, joined DELOREAN as a defendant in said action in March 1987, took a default judgment against DELOREAN in October 1987, and in June 1988 secured an order assessing damages

against DELOREAN totalling $53,705,170.47 plus interest. DELOREAN did not contest or defend the United Kingdom Action based on advice and counsel he received from MORGANROTH. (Exhibit "A" at ¶¶24-31).

In January 1989, DSQ brought an action in the United States District Court, Southern District of New York (hereinafter "DSQ New York Action") seeking various orders which would recognize and enforce the $53 million judgment taken against DELOREAN in the United Kingdom Action. DELOREAN retained MORGANROTH and another New York law firm known as Graubard, Mollen, Horowitz, Pomeranz & Shapiro (hereinafter "Graubard") to represent him in the DSQ New York Action. In January 1989, the United States District Court, Southern District of New York, per the Honorable Peter R. Leisure, issued an Order to Show Cause in the DSQ New York Action (hereinafter "NY Order") which restrained DELOREAN from selling transferring or encumbering properties owned by himself or Logan. (Exhibit "A" at ¶¶34-36).

Subsequent to January 1989, DELOREAN and Logan requested advice and counsel from MORGANROTH and Graubard attorney Jack Weinberg regarding whether certain proposed payments of funds by DELOREAN and/or Logan would constitute a violation of the terms and conditions of the NY Order (Exhibit "A" at ¶39). MORGANROTH and Graubard attorney Weinberg advised and counseled DELOREAN that the disbursement of certain funds to MORGANROTH, Graubard and others was legally permissible and not in violation of the terms and conditions of the NY Order. (Exhibit "A" at ¶¶40 and 42). In reliance on the advice and counsel of MORGANROTH and Weinberg, Logan transferred various sums to various parties at various times during 1989. (Exhibit "A" at ¶49).

In August 1990, DSQ moved for an order appointing a Special Master or Receiver, complaining of the disbursements to DELOREAN, MORGANROTH and Graubard during 1989. (Exhibit "A" at ¶66). At a hearing on the matter, the court expressed concern that there had been a violation of the NY Order and that the court was seriously considering issuing an order to Show Cause as to why DELOREAN, Logan and MORGANROTH should not be held in criminal contempt for violation of the NY Order. Immediately thereafter, MORGANROTH and attorney Weinberg pressured DELOREAN and Logan into settlement with DSQ. (Exhibit "A" at ¶¶69, 70 and 74).

DELOREAN and Logan were injured as a result of the advice given by MORGANROTH to DELOREAN regarding the United Kingdom Action, the DSQ New York Action, the NY Order, and the DSQ settlement. (Exhibit "A" at ¶¶23A,C,D; 30D; 39A-D; 40; 42-43; 47-48; 50; 77; 83-84; 90A-B; 98A; 100B; 106A-B; 108A-B; 114A-B; 116B; 122A; 124B; 130A; 132B; 140-41; 145A-B; 147A-B; 149; 155A; 157B).

At various times during the period from 1982 to 1993, MORGANROTH represented DELOREAN as co-counsel, co-adviser, and in tandem with and in conjunction with various attorneys from the Graubard law firm in New York. (Exhibit "A" at ¶¶36-37; 39A-D; 42-43; 46-54; 70-72; 74; 93-100; 118A-H; 119-123; 127C-H; 128-132). Said Graubard attorneys are therefore key witnesses to many facts regarding the professional relationship between DELOREAN and MORGANROTH, and particularly to the legal advice given by MORGANROTH concerning the United Kingdom Action, the DSQ New York Action, the NY Order and the DSQ settlement. Said Graubard attorneys practice law in the state of New York

and are residents of New York and New Jersey.(Exhibit "A" at ¶¶4, 8, 10).

At a time after the DSQ settlement, DELOREAN concluded that MORGANROTH's advice and services related to the United Kingdom Action, the DSQ New York Action, the NY Order and the DSQ settlement were negligent and amounted to breach of fiduciary duty, breach of contract and fraud. Consequently, DELOREAN and Logan sued MORGANROTH in the Supreme Court of the State of New York (hereinafter "New York Action") filing their Complaint on or about February 2, 1993 and personally serving said Complaint, Summons and Jury Demand on MORGANROTH on or about February 9, 1993. (See Exhibits "All and "B" attached hereto).

A few days after being served in the New York Action, MORGANROTH requested and stipulated to an extension of time to file an answer in that action. (Exhibit "C" attached hereto). A few days later, MORGANROTH filed the instant retaliatory action in this Honorable Court on or about February 25, 1993. MORGANROTH's instant Complaint alleges non-payment of attorney fees for services related to and rendered in the United Kingdom Action, the DSQ New York Action, the NY Order and the DSQ settlement, among other matters. These are the very same matters in which DELOREAN claims negligence, breach and fraud by MORGANROTH.

MORGANROTH has an office in New York and is licensed to and does practice law in New York. (See Morganroth Complaint, left margin of each page, and "Affidavit of Mayer Morganroth, Esq." attached thereto, at ¶1). DELOREAN is a resident of New Jersey, but sued MORGANROTH in New York where MORGANROTH has an office. MORGANROTH could have brought any claims against DELOREAN as counterclaims in the New York Action. Instead, MORGANROTH chose to file

the instant retaliatory lawsuit in a federal court approximately 700 miles from DELOREAN's residence. MORGANROTH intentionally created a situation in which this Honorable Court and the Supreme Court of the State of New York have concurrent jurisdiction over the disputes between DELOREAN and MORGANROTH. Defendants bring the instant motion to dismiss or stay the instant federal action in deference to the first-filed, first-served concurrent New York Action.

II. LEGAL ARGUMENT

A. THIS COURT HAS DISCRETION TO DISMISS OR STAY THE ENTIRE INSTANT ACTION IF THERE IS A PRESENTLY PENDING CONCURRENT STATE PROCEEDING

This Court's authority to dismiss the instant federal action in deference to a concurrent state action was established by the United States Supreme Court in Colorado River Water Conservation Dist., et al. v. United States, 424 U.S. 800, 817-821 (1976).

In Colorado River, the United States government brought an action in the Federal District Court seeking adjudication of water rights and naming as defendants some 1,000 water users. One of those defendants then joined the Government as a party in an already-established state court proceeding for adjudication of the same water rights and moved to dismiss the federal action. The Federal District Court granted the motion to dismiss, the Court of Appeals reversed, and the Supreme Court reversed and affirmed the District Court's dismissal on the ground that dismissal of the federal action in deference to the concurrent state action would serve important principles of wise judicial administration. Colorado River at 817.

The Supreme Court in Colorado River thus had squarely before it the issue whether a Federal District Court may exercise its discretion to dismiss a federal action in its entirety when a concurrent state court action will adjudicate the same issues and the same dispute. The Supreme Court held that a District Court may exercise such discretion and dismiss. Therefore, this Court has such authority.

Courts in this circuit have recognized and applied the principles set forth in Colorado River. Karakas v. McKeown, 783 F.Supp. 1028, 1030-33 (E.D.Mich. 1992). Babbitt v. State of Mich., 778 F.Supp. 941, 944-46 (W.D.Mich. 1991). 15192 Thirteen Mile Rd. v. City of Warren, 593 F.Supp. 147, 152-53 (E.D.Mich. 1984).

B. THE FACTORS CONSIDERED TO DETERMINE WHETHER THE INSTANT FEDERAL ACTION SHOULD BE DISMISSED OR STAYED WEIGH HEAVILY IN FAVOR OF DISMISSAL

The Supreme Court in Colorado River noted that "...the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention. The former circumstances, though exceptional, do nevertheless exist." Colorado River at 818. The Supreme Court then identified four factors or circumstances to be considered when exercising discretion for dismissal. Those factors include (1) whether either court has assumed jurisdiction over property, (2) whether the federal forum is inconvenient, (3) whether the dismissal will avoid piecemeal litigation, and (4) the order in which jurisdiction was obtained by the concurrent forums.

In cases decided after Colorado River, the Supreme Court identified four additional factors to be weighed when determining a motion for dismissal based on the "wise judicial administration" doctrine of Colorado River: (1) Whether concurrent jurisdiction exists, Will v. Calvert Fire Ins. Co., 437 U.S. 655, 666 (1978), (2) whether the source of governing law is state or federal, (3) whether the state court action will adequately protect the federal plaintiff's rights, and (4) the relative progress of the state and federal proceedings. Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 21-28 (1983). In addition, other courts have considered other factors, such as whether the federal claim is vexatious or contrived, Calvert Fire Ins. Co. v. American Mutual Reinsurance Co., 600 F.2d 1228, 1234 (7th Cir. 1979), noted with approval in Moses H. Cone Memorial Hospital, 460 U.S. at 17 fn. 20.

When weighing the factors, the Supreme Court observed:

> No one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counseling against that exercise is required [citation omitted.] Only the clearest of justifications will warrant dismissal.

Colorado River at 819. As will be shown hereinbelow, the circumstances surrounding the instant federal action and the concurrent New York Action provide the "clearest of justifications" warranting dismissal.

1. **Neither Court Has Assumed Jurisdiction Over Any Property.**

Neither this Honorable Court nor the New York court has assumed jurisdiction over any property. This is a neutral factor and not a bar to dismissal or stay.

2. **This Federal Forum Is Extremely Inconvenient To Defendants And Many witnesses. While The New York Forum Is Not Inconvenient To Plaintiffs.**

Defendant DELOREAN lives in New Jersey. Defendant ECCLESIASTES is a Delaware corporation. Neither Defendant has residence or offices in Michigan. Defendants will therefore be greatly inconvenienced if they must defend this action in this forum at such a great geographical distance.

Many of the witnesses Defendants would be forced to call to defend this action are New York or New Jersey residents who have no residences or offices in Michigan. These witnesses would be greatly inconvenienced by the travel required to attend these proceedings.

The Supreme Court in Colorado River found a 300-mile distance between the Federal District Court and the concurrent state court to be significant when weighing the convenience factor. The distance between this Honorable Court and the New York court is approximately 650 miles. The inconvenience to be inflicted on Defendants and Defendants' witnesses to properly defend and attend proceedings in this forum is therefore also significant.

When analyzing the federal forum inconvenience factor in Colorado River, the Supreme Court looked to Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). The Court in Gulf Oil identified

factors to be considered when assessing federal forum inconvenience. Among those factors are the private interests of the litigant, availability and convenience of witnesses, and whether the plaintiff has chosen an inconvenient forum to vex, harass or oppress the defendant by inflicting on defendant expense or trouble which is not necessary to plaintiff's own right to pursue his remedy. Gulf Oil at 508.

The Complaint filed in the instant action shows that MORGANROTH has an office in New York City. (See left margin, each page of Complaint). MAYER MORGANROTH is an attorney licensed to practice law in the state of New York. (See "Affidavit of Mayer Morganroth, Esq.", which was attached to, incorporated in and filed concurrently with the Complaint in the instant action, at ¶1). MAYER MORGANROTH represents himself and his law firm in the instant action. Although Mr. MORGANROTH is a Michigan resident, he and his firm also have significant contacts with, access to and offices in New York. Therefore, the "private interest" of Plaintiffs identified in Gulf Oil will not be prejudiced by a dismissal or stay of the instant action in deference to the concurrent New York Action.

After DELOREAN sued MORGANROTH and the other New York attorneys in the New York Action, MORGANROTH, licensed in New York and with offices in New York, could have easily pursued their claims against DELOREAN as counterclaims in the New York Action, or brought a separate action in Federal District Court in New York. Instead, MORGANROTH chose to bring this action in this inconvenient forum, far removed from DELOREAN and many of the key witnesses, for the sole purpose of vexing, harassing and oppressing DELOREAN. Given MORGANROTH's pervasive presence in New York, the expense

and trouble inflicted on DELOREAN is certainly not necessary to MORGANROTH's right to pursue their remedies. This factor weighs heavily in favor of dismissal or stay of the instant action.

3. **Dismissal or Stay Will Avoid Piecemeal Litigation Of The Claims And Disputes Between The Parties.**

"Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." LaDuke v. Burlington Northern R.R., 879 F.2d 1556, 1560 (7th Cir. 1989). The Supreme Court's paramount consideration in Colorado River was the danger of piecemeal litigation. Moses H. Cone Hospital, supra at 19. The same danger is present and paramount in the instant circumstances.

Simply put, DELOREAN sued MORGANROTH for legal malpractice, breach, and fraud in the New York Action. Then MORGANROTH sued DELOREAN for non-payment of attorney fees in the instant action. MORGANROTH and DELOREAN's claims against each other arise from the same transactions: MORGANROTH's legal representation of DELOREAN in the United Kingdom action and the DSQ New York Action (See FACTS, Section I, pp. 1-4). Further, Federal courts do not favor duplicate, reactive litigation which is often brought for the wrong reasons: to delay progress of the first-filed case, to inflict burdensome travel on one's opponent, or to obtain the supposed advantages of being a plaintiff. Lumen Const., Inc. v. Brant Const. Co., Inc., 780 F.2d 691, 693-694 (7th Cir. 1985).

DELOREAN's proof of legal malpractice, breach and fraud in the New York Action may act as a complete defense against MORGANROTH's claims of non-payment of fees, since

it is well-established that an attorney cannot collect fees for services negligently performed. Mallen and Smith, Legal Malpractice, 3d Ed., §11.24, pp. 698-699. At the very least, any judgment obtained by MORGANROTH in the instant action would be offset by any judgment obtained in the New York Action.

Each of the claims for relief made by Plaintiffs MORGANROTH in the instant action can be brought as counterclaims in the New York Action, including the Count I RICO claim. Tafflin v. Levitt, 493 U.S. 455 (1990).

Although DELOREAN could conceivably bring the New York claims against MORGANROTH as counterclaims in the instant federal action, to do so would be a duplicative waste of time and resources for the two courts and the parties alike. This is because DELOREAN's New York Action is not against MORGANROTH alone, but is also against other New York attorneys and New York law firms who represented DELOREAN and his companies at the same time as and in conjunction with the legal representation by MORGANROTH. If the instant federal action is not dismissed or stayed, DELOREAN will be forced to present the same evidence and the same witnesses twice: once as a plaintiff in New York, and again to defend the instant federal action. Such double presentation of evidence and witnesses will be expensive and unnecessarily wasteful for all concerned, and does not make sense.

In addition, litigation of the issues, claims and disputes between DELOREAN and MORGANROTH by two different courts will inevitably lead to further litigation over issues of res judicata and collateral estoppel as one or both of the parties seek to make the rulings of one court binding on the other court.

Such procedural gamesmanship may taint both proceedings if the parties attempt to accelerate or stall to influence which court finishes first. The result would be similar to forum shopping, and just as unseemly. Microsoftware Computer Systems, Inc. v. Ontel Corp., 686 F.2d 531, 537 (7th Cir. 1982), overruled on other grounds, Gulf Stream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271 (1988). The presence of such issues will also complicate both actions and consume more judicial resources and resources of the parties. The complication and waste resulting from such piecemeal litigation can be easily avoided by dismissal or stay of the instant action in its entirety.

Federal courts have noted an additional concern regarding duplicative concurrent litigation:

> When a case proceeds on parallel tracks in state and federal court, the threat to efficient adjudication is self-evident. But judicial economy is not the only value that is placed in jeopardy. The legitimacy of the court system in the eyes of the public and fairness to the individual litigants also are endangered by duplicative suits that are the product of gamesmanship or that result in conflicting adjudications.

Lumen, supra, at 694, citing to R. Pound, The Causes of Popular Dissatisfaction With The Administration of Justice (Address of Aug. 29, 1906 to the American Bar Association), Reprinted in 35 F.R.D. 273 (1964).

A race to see which forum can decide the issues first would work against reasoned decision-making by either forum. Arizona v. San Carlos Apache Tribe, 463 U.S. 545, 567-68

(1983). The Supreme Court has observed that it is appropriate for a Federal District Court to dismiss or stay under Colorado River where that court "...concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." Moses H. Cone Hospital, supra at 28. Here, all the disputes between DELOREAN and MORGANROTH can be litigated and resolved in the New York Action, if this Honorable Court grants this motion to dismiss or stay. Such a dismissal or stay will avoid duplicative, wasteful, piecemeal litigation. This factor weighs heavily in favor of dismissal or stay.

4. **The New York State Court Obtained Jurisdiction over These Disputes First.**

DELOREAN and Logan Manufacturing Company filed their Complaint against MORGANROTH in the New York Action on or about February 2, 1993, and served the Summons, Complaint and Jury Demand on MORGANROTH on or about February 9, 1993. (See Exhibit "B" attached hereto). MORGANROTH then filed their Complaint against DELOREAN and ECCLESIASTES in the instant federal action on or about February 25, 1993 and served Defendants thereafter. Because filing and service was effected first in the New York Action, the New York court assumed jurisdiction over these parties and their disputes first. This factor weighs in favor of dismissal or stay of the instant action in favor of the New York Action.

5. **The Source of Law Governing These Disputes Is Overwhelmingly State Law, Except The RICO Count Which Can Be Adjudicated By The New York State Court.**

The Complaint in the instant federal action alleges 12 counts including RICO, fraudulent misrepresentations, breach of express contract, breach of implied contract, account stated, quantum meruit, and unjust enrichment. The Complaint in the New York Action alleges nine causes of action against MORGANROTH and his law firm, including negligence and legal malpractice, breach of fiduciary duties, fraud and deceit, and breach of contract. Therefore of the 19 counts or causes of action alleged in these disputes between the parties, 18 are solidly rooted in and normally arise from state law, and are normally litigated in state courts.

Only the RICO claim in the instant federal action arises from federal law. However, the RICO claim does not require adjudication in a federal court, because the Supreme Court has held that state courts have concurrent jurisdiction over civil RICO claims. Tafflin v. Levitt, 493 U.S. 455, 467 (1990). Because the law governing the disputes between the parties is overwhelmingly state law, this factor weighs in favor of dismissal or stay of the instant action.

6. The New York Court Can Protect All Of MORGANROTH's Federal Rights.

Count I of MORGANROTH's instant federal Complaint seeks adjudication of federal rights which arise under the RICO statutes. The United States Supreme Court has held that state courts have concurrent jurisdiction over civil RICO claims and may adjudicate such federal rights. Tafflin, supra at 467. The clear implication from Tafflin is that state courts are perfectly capable of protecting plaintiff's federal rights in RICO actions. Indeed, the Supreme Court concluded that allowing state courts to entertain and resolve RICO claims would facilitate the

enforcement of the rights afforded by the RICO statute and would promote the broad remedial purposes intended by Congress when enacting RICO. Tafflin at 467.

The Tafflin holding has been acknowledged by a District Court in the Sixth Circuit. Kaufman v. BDO Seidman, 787 F.Supp. 125, 130 (W.D.Mich. 1992), affirmed 984 F.2d 182 (6th Cir. 1993). RICO claims have been adjudicated by New York courts. Lichtenstein v. Polizzotto, 575 N.Y.S.2d 642, 643 (Sup. 1991).

Where federal courts and state courts have concurrent jurisdiction over certain federal rights, such as RICO claims, adjudication of those rights in federal court "...will neither be practical nor wise as long as it creates the possibility of duplicative litigation, tension and controversy between the federal and state forums, hurried and pressured decision making, and confusion over the disposition of property rights." San Carlos Apache Tribe, supra, at 569. As to any doubts MORGANROTH may express about whether their RICO Count will be fairly adjudicated in the New York court, the Supreme Court has observed that "State courts, as much as federal courts, have a solemn obligation to follow federal law." San Carlos Apache Tribe, supra, at 571.

The Supreme Court has clearly found that state courts can and will protect the federal rights of RICO litigants, and are particularly well-suited to hear and adjudicate RICO claims. This factor therefore weighs in favor or dismissal or stay.

7. **Neither Action Is More Advanced Procedurally And Therefore This Is A Neutral Factor.**

DELOREAN and Logan have filed a Complaint and an Amended Complaint in the New York Action. MORGANROTH is to file his answer or response by June 18, 1993. In the instant action, MORGANROTH has filed a Complaint to which this motion is the first response.

Given the infancy of both proceedings, neither is really more advanced than the other in practical terms and therefore this is a neutral factor and not a bar to dismissal or stay.

8. **This Federal Court And The New York State Court Have Concurrent Jurisdiction over The Claims And Disputes Between These Parties.**

The Complaint in the instant federal action alleges that this Federal Court has personal and subject matter jurisdiction over the parties and the claims in this action. (See Complaint at ¶¶ 5-8).

The New York court also has personal jurisdiction over Mr. MORGANROTH and his law firm by virtue of the presence of an office of MORGANROTH & MORGANROTH in New York City, the status of MAYER MORGANROTH as an attorney licensed to practice law in the State of New York, and the fact that MORGANROTH performed legal services for DELOREAN in New York which are the source of the dispute between the parties. Further grounds for personal jurisdiction arises from the fact that MORGANROTH and his law firm have been served with process as defendants in the New York Action. (Exhibits "B" and "E" attached hereto).

The New York court has concurrent subject matter jurisdiction over the claims alleged by MORGANROTH in the instant federal action by virtue of the fact that each of said claims can be brought as counterclaims in the New York Action

pursuant to N.Y. Civ. Prac. L. & R. 601 (McKinney, 1976) and N.Y. Civ. Prac. L. & R. 3019 (McKinney, 1991). As previously set forth hereinabove, this jurisdiction includes subject matter jurisdiction over MORGANROTH's RICO claim. Tafflin, supra.

Because the New York court has concurrent jurisdiction over the parties and the disputes, this factor weighs in favor of dismissal or stay.

9. MORGANROTH's Federal RICO Claim Is Vexatious And Contrived.

Two weeks after DELOREAN sued MORGANROTH in New York, MORGANROTH retaliated by filing the instant federal action against DELOREAN and ECCLESIASTES. Such a reactive, defensive maneuver by MORGANROTH is a misuse of the Federal Court which is another factor justifying dismissal or stay of the instant federal action. Moses H. Cone Hospital v. Mercury Constr. Corp., 460 U.S. 1, 17, n. 20 (1982); Calvert Fire Ins. Co. v. American Mutual Reinsurance Co., 600 F.2d 1228, 1234 (7th Cir. 1979).

Further, the instant federal action by MORGANROTH is vexatious in that MORGANROTH knows that this forum is extremely inconvenient for DELOREAN and ECCLESIASTES, for the reasons set forth fully in Section II, B.2., supra. MORGANROTH's vexatious purpose is further shown by the fact that MORGANROTH could easily have brought all their claims against DELOREAN as counterclaims in the New York Action, or even brought said claims in a Federal District Court in New York where they have an off ice, where Mr. MORGANROTH is licensed to practice law, and which is nearer to DELOREAN and ECCLESIASTES and the many witnesses they will be forced to call to defend against these claims.

Instead, MORGANROTH purposely chose this distant federal forum to vex and harass DELOREAN and ECCLESIASTES.

The federal RICO claim by MORGANROTH in the instant federal action is hopelessly contrived as set forth in the detailed analysis of that claim appearing in Section II, C., infra. This contrived claim serves no purpose except to allow MORGANROTH to bring their garden variety allegations of failure to pay attorney fees into a federal forum which is distant and inconvenient to DELOREAN and ECCLESIASTES. The RICO Count is also obviously designed to besmirch and smear DELOREAN's public reputation with the taint of RICO "racketeering". Because the RICO claim which brings the instant action to federal court is so contrived, and brought solely to harass DELOREAN, this factor weighs in favor of dismissal or stay.

10. The Factors To Be Considered For Dismissal or Stay Weigh Heavily In Favor Of Dismissing or Staying The Instant Federal Action.

In sum, the factors analyzed hereinabove weigh heavily in favor of dismissing or staying the instant federal action in deference to the concurrent New York Action. Such dismissal or stay will avoid piecemeal litigation of the disputes between the parties, allow these state-law claims of legal malpractice, fraud, breach of contract and failure to pay attorney fees to be litigated in a state court, and avoid litigating these disputes in a forum which has been chosen for no other purpose than to place the proceedings at a far distance from Defendants and their witnesses for the sole purpose of vexing and harassing Defendants.

When all the above factors are analyzed, it is clear that great waste and injustice may be visited on the Defendants and the judicial system by allowing concurrent federal and state actions to go forward, while no prejudice will result to Plaintiffs MORGANROTH if their claims are adjudicated in the New York court. This Honorable Court should therefore dismiss or stay the instant federal action. The instant circumstances amount to the "exceptional circumstances" in which a dismissal or stay will clearly serve the important interests of the judiciary and the parties in avoiding duplication, waste, piecemeal litigation and unnecessary harassment of a party. Colorado River, supra at 813. For all these good reasons, this Honorable Court should grant the instant motion to dismiss or stay the instant federal action in deference to the New York Action.

C. IF THIS HONORABLE COURT DECIDES NOT TO DISMISS OR STAY THE INSTANT ACTION IN ITS ENTIRETY, THIS HONORABLE COURT SHOULD STRIKE PLAINTIFFS' RICO CLAIM IN COUNT I FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Defendants DELOREAN and ECCLESIASTES bring the instant motion to strike Plaintiffs' RICO claim pursuant to Federal Rules of Civil Procedure, Rule 12 (b) (6). Evaluating a complaint pursuant to a Rule 12 (b) (6) motion, the court accepts Plaintiffs' allegations as true. Craighead v. E.F. Hutton & Co., Inc., 899 F.2d 485, 489 (6th Cir. 1990). However, mere conclusory allegations in a complaint are insufficient to state a claim for relief, where no facts are alleged to support conclusions or where allegations are contradicted by the pled facts

themselves. Golyar v. McCausland, 738 F.Supp. 1090, 1093 (W.D.Mich. 1990), citing Vermilion Foam Products co. v. General Electric Co., 386 F.Supp. 255 (E.D.Mich. 1974). As will be shown hereinbelow, MORGANROTH has failed to state a RICO cause of action by pleading certain essential elements of their claim in the form of conclusory allegations unsupported by facts.

1. The Complaint Fails To Identify or Define The RICO "Enterprise".

The Racketeer Influenced and Corrupt Organizations Act (RICO) is found at 18 U.S.C. §§1961-68.[1] Parties such as MORGANROTH may seek civil remedies under RICO §1964(c) which states, in pertinent part:

> "(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." [Emphasis added.]

Based on a plain reading of §1964(c), instant Plaintiffs must adequately plead a "violation of Section 1962" to state a cause of action under RICO. Instant Plaintiffs have failed to do so.

An oft-cited case states that a plaintiff attempting to state a claim under RICO must allege that defendant violated §1962,

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[1]The Sections of the RICO statute will hereinafter be referred to by their section numbers only, so that 18 U.S.C. §1961 will appear as §1961.

and to do so, plaintiff must allege the existence of seven elements: (1) That the defendant (2) through the commission of two or more acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. Moss v. Morgan Stanley Inc., 719 F.2d 5, 17 (2nd cir. 1983).

Moss element (6) requires allegation of an "enterprise". The language of §1962 (a), (b) and (c) clearly requires the existence of an "enterprise". It has been stated that in pleading a RICO claim "the first rule is that '[a] plaintiff must identify the enterprise'". Jennings v. Emry, 910 F.2d 1434, 1439-40 (7th Cir. 1990).

RICO §1961(4) defines "enterprise" as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity". As construed by the Supreme Court, "Section 1961(4) describes two categories of associations that come within the purview of the 'enterprise' definition.... Each category describes a separate type of enterprise to be covered by the statute--those that are recognized as legal entities and those that are not." U.S. v. Turkette, 452 U.S. 576, 581-82 (1981).

Plaintiffs' instant Complaint utterly fails to identify or define a RICO "enterprise", setting forth only the following conclusory allegations at Complaint ¶¶38 and 39:

> 38. Defendants have been and are employed and/or associated with each other and others in a partnership, corporation and/or association in fact which formed and comprised an enterprise as defined 18 U.S.C. §1961-1965 et seq.

39. The foregoing enterprise comprised formal or informal associations in fact that functioned as continuing units over time through a hierarchical or consensual decision making structure.

The foregoing is simply a conclusory paraphrasing of §1961(4). Plaintiffs offer no facts or clues whatsoever as to the identity of the "enterprise". Who are the mysterious "others" allegedly associating with Defendants? If the enterprise is a partnership or corporation, what is it name? If the enterprise is an association in fact, who are the associates, and where are the facts showing that the association is "an ongoing organization, formal or informal" and that "the various associates function as a continuing unit"? Turkette, supra at 583. Plaintiffs' instant pleading answers none of these questions. Plaintiffs cannot identify or describe the enterprise because no such enterprise exists except in Plaintiffs' dreams of transmogrifying a simple claim for non-payment of attorney fees into a treble-damages RICO bonanza.

This Honorable Court has previously found allegations of a RICO "enterprise" defective where the Complaint stated that the three defendants "conspired in an enterprise," but did not state of what or whom that enterprise consisted. Hall American Center Associates v. Dick, 726 F.Supp. 1083, 1090 (E.D.Mich. 1989). "Each defendant is entitled to individual consideration and to know what enterprise it is that they are alleged to have illegally conducted through a pattern of racketeering activity." Hall American at 1989.

Nor can Plaintiffs claim that the "pattern of racketeering activity" which they have alleged also serves as an adequate pleading of the 'enterprise". As the Supreme Court has clearly

stated, the RICO enterprise and the RICO pattern of racketeering activity are distinct elements. Whereas the enterprise is an entity, the pattern of racketeering activity is a series of criminal acts as defined by the RICO statute. Turkette, supra at 583. Plaintiffs have failed to identify the enterprise entity.

Because Plaintiffs have utterly failed to identify the essential RICO enterprise, Count I of Plaintiffs' instant Complaint fails to state a claim. On this grounds alone, Count I should be dismissed.

2. The Complaint Fails To Plead A Violation Of §1962.

Plaintiffs' failure to identify or define the "enterprise" leaves a gaping void in the foundation of Plaintiffs' RICO claim which brings the entire claim crashing down. Because Plaintiffs fail to identify the enterprise, Plaintiffs have also failed to plead a violation of §1962(a)(b)(c) or (d).

For example, RICO §1962(a) makes it unlawful for a person to "use or invest" income derived from racketeering activity to acquire, establish, or operate an enterprise. With the enterprise unidentified, it is impossible for Plaintiffs to plead any facts showing such acquisition, establishment or operation of the enterprise, or that racketeering income was used or invested for such acquisition, establishment or operation, and indeed Plaintiffs have pled no such facts. Plaintiffs appear to attempt to plead a violation of §1962(a) in Complaint ¶¶56, 57, 51 and the last sentence of §53. However, these paragraphs are again a mere paraphrasing of the language of §1962(a), and set forth no facts whatsoever to support their bare conclusory allegations. Such conclusory pleading that RICO provisions have been violated is insufficient. Jennings, supra at 1438-39.

Plaintiffs fail to plead a violation of §1962(b) for the same reason. RICO §1962(b) makes it unlawful for a person to "acquire or maintain" an interest in or control of an enterprise through a pattern of racketeering activity. With no identified enterprise, it is impossible for Plaintiffs to plead facts showing that Defendants gained an interest in or control or an enterprise through racketeering activity. Plaintiffs have pled no such facts. Plaintiffs appear to attempt to plead their violation of §1962(b) in Complaint ¶54, but these allegations are again merely a poor paraphrasing of the statutory language completely devoid of factual support.

The very same problem infects Plaintiffs' allegations of a violation of §1962(c), which makes it unlawful for a person employed by or associated with an enterprise to conduct or participate in the conduct of the enterprises affairs through a pattern of racketeering activity. With the enterprise unidentified, Plaintiffs have failed to plead any facts showing that the Defendants were employed by or associated with the enterprise or conducted or participated in the conduct of the enterprise affairs. Plaintiffs apparently attempt to plead a §1962(c) violation in Complaint ¶58, but again this paragraph merely paraphrases the statutory language and fails to set forth any facts supporting its conclusory allegations.

Plaintiffs' failure to adequately plead a violation of §1962 (a)(b) or (c) leads necessarily to a failure to adequately plead a violation of §1962(d) which states, "It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section." Because Plaintiffs fail to identify who or what comprises the enterprise, and also fail to plead facts showing a violation of §1962(a),(b) or (c), Plaintiffs have also

failed to allege facts indicating a conspiracy for such violation. Plaintiffs appear to attempt to plead a violation of §1962(d) by liberally sprinkling Count I with the words "conspired" or "conspiracy". However, complaint ¶59 again merely paraphrases the statutory language of §1962(d), and this Honorable Court has previously found that bare conclusory allegations that Defendants "conspired" or acted "in furtherance of a conspiracy" are insufficient to plead a violation of §1962(d). McIntyre's Mini Computer v. Creative Synergy Corp., 644 F.Supp. 580, 585 (E.D.Mich. 1986).

3. The Complaint Fails To Plead Facts Showing Plaintiffs' Injuries Were Caused By A Violation Of §1962.

Plaintiffs' failure to identify the enterprise and failure to adequately plead a violation of §1962 necessarily means that Plaintiffs have failed to plead facts to show that their injuries were caused "by reason of a violation of §1962" as required under §1964(c). A neighboring District Court considering the sufficiency of a RICO pleading recently observed that "...section 1964(c) provides a remedy only for injury from violations of section 1962, and the violation of section 1962(a) is the investment or use of racketeering proceeds rather than the racketeering itself. Therefore, under subsection (a), plaintiffs must sufficiently allege an injury from the use or investment of racketeering income." In Re Tucker Freight Lines, Inc., 789 F.Supp. 884, 891 (W.D.Mich. 1991). This Honorable Court has followed the same principle. Landmark Savings & Loan v. Rhoades, 527 F.Supp. 206, 208-9 (E.D.Mich. 1981). Barker v. Underwriters At Lloyd's, London, 564 F.Supp. 352, 358 (E.D.Mich. 1983).

The Tucker Court, in support of its finding, quoted the Supreme Court opinion in Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985):

> Conducting an enterprise that affects interstate commerce is obviously not in itself a violation of §1962, nor is mere commission of the predicate offenses. In addition, the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation. Tucker at 891-92, quoting Sedima at 496.

Sedima and Tucker establish the principle that Plaintiffs must adequately allege that their injuries were caused by a violation of §1962. However, as already established hereinabove, Plaintiffs have failed to identify the RICO enterprise, and have therefore also failed to plead facts showing any prohibited investment in, acquisition of, or conduct of the unidentified enterprise. Since there is no identifiable enterprise, and no identifiable violation of §1962, it therefore necessarily follows that Plaintiffs have failed to adequately allege that their injuries were caused by the unidentified violations affecting the unidentified enterprise.

4. The Complaint Fails To Plead other Essential RICO Elements.

Plaintiffs' failure to plead an identifiable enterprise causes other fatal inadequacies in Count I. It is well-established that under RICO the "person" and the "enterprise" must be separate and different entities, and that this distinction must be described in the pleadings. Fleischhauer v. Feltner, 879 F.2d 1290, 1296-97 (6th cir. 1989). Palmer v. Nationwide Mut. Ins.

Co., 945 F.2d 1371, 1373 (6th Cir. 1991). Robinson v. Kidder, Peabody and Co., Inc., 674 F.Supp. 243, 247 (E.D.Mich. 1987). Because Plaintiffs' Complaint fails to state of what or whom the enterprise consists, Count I of Plaintiffs' instant Complaint may run afoul of the just-stated rule that the defendant/"person" cannot be the same entity as the "enterprise". Hall American, supra at 1090. As pled, Plaintiffs give no clue whether the "person" and "enterprise" are distinct entities. Plaintiffs' pleading is therefore inadequate.

As set forth in element (7) in Moss, supra, and in the express language of §1962(a), (b) and (c), plaintiffs must establish that the RICO enterprise is somehow involved in interstate or foreign commerce. Because Plaintiffs have failed to identify the enterprise, Plaintiffs have also failed to state facts showing that the unidentified enterprise has the required interstate or foreign commerce nexus. Plaintiffs' pleading of this essential element is therefore insufficient.

5. Plaintiffs' Complaint Fails To Adequately Plead The Requisite Racketeering Activity Predicate Acts.

Allegation of a pattern of racketeering is the heart of any RICO complaint. Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 154 (1987). "Pattern of racketeering activity" is defined in §1961(5) as requiring "at least two acts of racketeering activity". "Racketeering activity" is defined in §1961(1). The Supreme Court has found that racketeering activity "consists of no more and no less" than commission of a predicate act listed in §1961(1). Sedima, supra at 495. Far from pleading a "pattern of racketeering activity", Plaintiffs have failed to even adequately plead the predicate acts under §1961(1).

Plaintiffs' Complaint ¶49C alleges that Defendants violated Michigan state laws by obtaining goods and services under false pretenses. Such acts are not included among the predicate acts listed in §1961(1).

Plaintiffs' Complaint ¶49D alleges that Defendants violated 18 U.S.C. §371 by obtaining money and valuable consideration under false pretenses. Violation of 18 U.S.C. §371 is not a predicate act listed in §1961(1).

Plaintiffs' Complaint ¶¶49C, 49E and 49F allege violation of 18 U.S.C. §§1952, 1956 and 1957. Although violations of these statutes are among the predicate acts listed in §1961(1), Plaintiffs have pled violation of these statutes in the most bare conclusory fashion, completely devoid of factual support. Such conclusory pleading is inadequate. Jennings, supra at 1438. Plaintiffs have therefore failed to adequately plead commission of the RICO predicate acts.

The only predicate acts pled by Plaintiffs with any factual support are the allegations of violations of 18 U.S.C. §§1341 and 1343 (mail fraud and wire fraud). However, these allegations are insufficient to meet the pleading requirements of Federal Rules of Civil Procedure, Rule 9(b), which states, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally."

It is well-established that a RICO complaint alleging predicate acts of mail fraud or wire fraud may be dismissed under Rule 9(b) for failure to plead said acts with particularity. Craighead v. E.F. Hutton & Co., Inc., 899 F.2d 485, 494 (6th Cir. 1990).

To meet Rule 9(b) specificity requirements when pleading mail fraud or wire fraud, the Complaint must allege the time, place, speaker and content of any alleged misrepresentations. Moore v. Kayport Package Express, Inc., 885 F.2d 531, 541 (9th Cir. 1989). Bender v. Southland Corp., 749 F.2d 1205, 1216 (6th Cir. 1984).

Plaintiffs attempt to plead violations of §1341 in Complaint ¶46A, setting forth ten instances of use of the U.S. mails on a number of dates from May 6, 1986 to December 31, 1992. The basis of Plaintiffs' entire instant Complaint is alleged non-payment of attorney fees after alleged statements by Defendants that they would pay such fees. However, of the ten alleged mailings enumerated in Complaint ¶46A, neither Item 3 nor Item 7 makes any mention of communication regarding attorney fees. Of the eight remaining items enumerated in Complaint ¶46A, none sets forth with any specificity what was actually said in the mailings regarding legal fees, or even whether the statements made regarding legal fees were false or fraudulent in any way. These allegations therefore do not meet the specificity requirements of Rule 9(b).

Plaintiffs attempt to allege violation of §1343 in Complaint ¶46B, setting forth 33 instances of use of telephone or telefax ranging in dates from June 28, 1988 to February 2, 1993. However, nearly 1/4 of the 33 enumerated instances make no mention whatsoever of fees. (See Complaint ¶46B, enumerated Items 1, 2, 5, 7, 8, 9, 10 and 11). Of the remaining alleged communications which do mention fees, the description of those communications fail to set forth with any specificity what was said by whom regarding said fees, and whether the statements allegedly made regarding fees were false or fraudulent in any

way. Plaintiffs have therefore failed to plead violation of §1343 with the requisite specificity.

In sum, Plaintiffs' allegations of violations of Michigan state laws and of 18 U.S.C. §371 fail because such violations are not among the predicate acts enumerated in §1961(1). Plaintiffs' allegations of violations of §§1952, 1956 and 1957 fail because they are conclusory and without factual support. Plaintiffs' allegations of violations of §1341 and 1343 fail for lack of specificity required under Rule 9(b). Therefore, Plaintiffs have failed to adequately plead the requisite racketeering activity predicate acts, much less any "pattern of racketeering activity."

6. Plaintiffs' Complaint Fails To Plead The Requisite "Pattern" Of Racketeering Activity.

The Supreme Court has observed that an essential of any RICO Complaint is allegation of a pattern of racketeering. Agency Holding Corp., supra, at 154. RICO §1961(5) defines "pattern of racketeering activity" as requiring at least two acts of racketeering activity within ten-years of each other.

In an oft-quoted footnote, the Supreme Court in Sedima observed regarding the "pattern" requirement:

> "As many commentators have pointed out, the definition of a 'pattern of racketeering activity' differs from the other provisions in §1961 in that it states that a pattern 'requires at least two acts of racketeering activity,' §1961(5) (emphasis added) not that it 'means' two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two of anything do not generally form a 'pattern'. The legislative history support the

> view that two isolated acts of racketeering activity do not constitute a pattern. As the Senate Report explained: 'The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern." S. Rep. No. 91-617, p. 158 (1969) (Emphasis added).

Sedima, supra at 496, fn. 14.

The Supreme Court revisited the "pattern" issue in H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989). In H.J. Inc., the Supreme Court reiterated that a "pattern" of racketeering activity is not formed by "sporadic activity", and that "pattern" requires a showing of a relationship between the predicate acts and a threat of continuing activity. The Court cited the Congressional Record for the principle that "it is this factor of continuity plus relationship which combines to produce a pattern." H.J. Inc. at 239. The Court then observed that to prove a pattern of racketeering activity consistent with Congress' intent "...a plaintiff or prosecutor must show that the racketeering predicates are related and that they amount to or pose a threat of continued criminal activity." [Emphasis in original.] H.J. Inc. at 239. Plaintiffs have pled no facts showing that any alleged predicate acts were "related" or that they pose any threat of continued activity.

Regarding the "relatedness" aspect of "pattern", the Supreme Court drew from another federal statute to conclude that predicate acts would form a pattern if they "...have the same or

similar purposes, results, participants, victims, or methods of commission, or otherwise or interrelated by distinguishing characteristics and are not isolated events." H.J. Inc. at 240, citing Title X §3575(e). Plaintiffs' Complaint utterly fails to plead facts showing any "relatedness" between the alleged predicate acts.

Plaintiffs' Complaint ¶¶43A-J allege various "schemes" which Plaintiffs claim were carried out by Defendants DELOREAN and ECCLESIASTES and some mysterious "others". Applying the "relatedness" standards set forth in Sedima and H.J. Inc., a close reading of these "schemes" shows that they did not have the same or similar purposes. As pled by Plaintiffs themselves, the purpose of the alleged "DRLP Scheme" was to convert money to satisfy Defendants' own personal financial obligations, while the purpose of "The Eureka Federal Savings and Loan Scheme" was supposedly to obtain money to be used to reopen the DMCL Plant in Ireland, while the purported purpose of "The Creditors Scheme" was to acquire assets of Logan at less than fair market value. Thus, even if the alleged "schemes" existed (and Defendants insist vehemently that they did not) they did not have the same or similar purposes. A close reading of the "schemes" also shows that as pled by plaintiffs, the schemes did not have the same or similar results, participants, or victims as required to establish "relatedness" under Sedima and H.J. Inc.

Plaintiffs have not pled any facts to indicate that the various alleged "schemes" used the same or similar methods of commission. In fact, none of the "schemes" alleged in ¶¶43A-J allege the violation of any of the predicate acts listed in §1961(1). The only §1961(1) predicate acts alleged related to

any "scheme" are the mail fraud and wire fraud alleged to have occurred in the course of "The Mayer Morganroth and Morganroth & Morganroth Scheme" alleged in Complaint ¶43J. As previously established hereinabove, Plaintiffs have failed to adequately plead the mail fraud and wire fraud violations with the specificity required by Federal Rules of Civil Procedure, Rule 9(b).

Nor has this Honorable Court been particularly impressed with RICO claims based on mail fraud or wire fraud in the past, noting that "RICO ought not be used as a basis for federal question jurisdiction in every 'garden variety' fraud case." McIntyre's, supra, at 584. This Honorable Court quoted Medallion T.V. Enterprises. Inc. v. SelectV. Inc., 627 F.Supp.1290, (D.C.Cal. 1986) as follows:

> Most substantial business transactions involved two or more uses of the mail during negotiations. To hold that two such [acts] are sufficient to constitute a 'pattern of racketeering activity' would be to sweep into federal courts, under RICO, the great majority of action or fraud in commercial transactions.

McIntyre's, supra, at 584.

In sum, Plaintiffs have failed to adequately plead the commission of any RICO predicate acts by Defendants. In addition, Plaintiffs have failed to plead facts to show that the ill-pled predicate acts were related to each other in the manner required under Sedima and H.J. Inc., or that there is any threat of continuation of such acts. Plaintiffs have therefore failed to adequately plead a "pattern" of racketeering activity, an essential element of any RICO pleading.

D. IF THIS HONORABLE COURT DOES NOT DISMISS OR STAY THE ENTIRE INSTANT ACTION AND DOES NOT STRIKE THE COUNT I RICO CLAIM, THIS HONORABLE COURT MUST AT THE VERY LEAST ORDER PLEADING OF THE COUNT I RICO CLAIM WITH GREATER SPECIFICITY

This Honorable Court has authority to grant a motion for more definite statement pursuant to Federal Rules of Civil Procedure, Rule 12(e), "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading...." Rule 12(e). As previously pointed out hereinabove, Plaintiffs' Complaint is vague and ambiguous on at least the following points:

(1) Plaintiffs fail to identify the RICO "enterprise".

(2) Plaintiffs fail to reveal whether their RICO claim is based on violation of §1962(a), (b), (c), (d), all of them, or some combination thereof.

(3) If Plaintiffs' claim is under §1962(a), Plaintiffs fail to identify the "person" who received illicit racketeering income, how that person used or invested such income in the enterprise, and how such use or investment of such monies in the enterprise injured Plaintiffs.

(4) If Plaintiffs' claim is under §1962(b), Plaintiffs fail to identify the "person" who acquired or maintained an interest in or control of the enterprise, and facts describing the circumstances of such acquisition and maintenance. Plaintiffs fail to plead any facts showing how they were injured by any such acquisition or maintenance of control.

(5) If Plaintiffs' RICO claim is on the basis of §1962(c), Plaintiffs fail to identify the "person" employed by or associated with the enterprise, fail to describe how that "person" conducted or participated in the conduct of the enterprise's affairs, and fail to plead facts showing how Plaintiffs were injured by such conduct and participation in such affairs.

(6) If Plaintiffs' claim is based on §1962(d), Plaintiffs fail to plead facts showing an agreement between or among the defendants to commit the RICO predicate acts and that such defendants have knowledge that those predicate acts were part of a pattern of racketeering activity conducted in such a way as to violate §1962(a), (b) and (c).

(7) Plaintiffs fail to adequately plead the commission of predicate acts listed in §1961(1), and fail to plead the details of the alleged wire fraud and mail fraud with the specificity required by Rule 9(b).

(8) Plaintiffs have failed to plead facts showing any "pattern" of racketeering activity by Defendants.

III. CONCLUSION

First and foremost, this Honorable Court should dismiss or stay the entire instant action. A dismissal or stay is well justified under the "wise judicial administration" doctrine of Colorado River. Such a dismissal/stay will avoid a duplicative waste of court and party resources and harassment of Defendants.

If this Honorable Court elects not to dismiss or stay this entire action, then this Honorable Court should strike the Count I RICO claim from the instant complaint based on Plaintiffs' failure to identify the essential RICO "enterprise", failure to plead facts showing any violation of §1962, failure to plead facts

showing causation, failure to plead facts showing the commission of the requisite predicate acts, and failure to plead facts showing any "pattern" of such acts.

Lastly, if this Honorable Court elects to neither dismiss/stay the entire action nor dismiss the Count I RICO claim, then this Honorable Court certainly should require Plaintiffs to make a more definite statement of their RICO claims so that Defendants can frame a responsive pleading.

Based on all of the authorities and arguments set forth hereinabove, and on any additional authorities or arguments which may be presented by Defendants to this Honorable Court in further briefing or oral presentation, Defendants respectfully request that this Honorable Court issue orders as requested in Defendants' instant motion.

DATED: May 5, 1993

FREIDBERG LAW CORPORATION

BY /s/ Edward Freidberg
EDWARD FREIDBERG
Attorney for Defendants

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Defendants' Motion For Partial Summary Judgment Against Count I (RICO) of Plaintiffs' Complaint

District Court Case №. 93-CV-70848
Filed December 22, 1993

Pages E-1 thru E-70

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST COUNT I (RICO) OF PLAINTIFFS' COMPLAINT

1. Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. pursuant to FRCP 56(b), hereby move this Court for an order granting summary judgment against Count I (RICO) of Plaintiffs' Complaint on the following grounds:

a. That Plaintiffs have failed to produce evidence to establish the existence of a RICO "enterprise";

b. That Plaintiffs have failed to produce evidence that Defendants have engaged in a "pattern of racketeering activity";

c. That Plaintiffs have failed to produce evidence that Defendants violated 18 U.S.C. 1962(a);

d. That Plaintiffs have failed to produce evidence that Defendants violated 18 U.S.C. 1962(b);

e. That Plaintiffs have failed to produce evidence that Defendants violated 18 U.S.C. 1962(c);

f. That Plaintiffs have failed to produce evidence that Defendants violated 18 U.S.C. 1962(d);

g. That Plaintiffs have failed to produce evidence that they were injured in their business or property "by reason of" a violation of RICO Section 1962;

h. That Plaintiffs' RICO claim exploits the confidences and secrets and information of the former client Defendants in violation of the Michigan Rules of Professional Conduct which govern attorney practice in this Honorable Court, and therefore as a matter of law and public policy and to enforce the ethical rules, judgment must be rendered against Plaintiffs' RICO claim.

2. In support of this motion, Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. rely upon the brief in support of this motion, Affidavit of Daniel Boone, Affidavit of Edward Freidberg, Affidavit of Stanley P. Fleshman, Affidavit of John Z. DeLorean and exhibits attached thereto.

3. On December 15, 1993, a conference between attorneys was held in which counsel for Defendants explained the nature of the motion and its legal basis to counsel for Plaintiffs. Defendants, counsel requested the Plaintiffs' counsel dismiss Count I (RICO) from Plaintiffs' Complaint, but Plaintiffs' counsel said they would not do so. Therefore, Defendants bring the instant motion.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORPORATION

By /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
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Sacramento, CA 95825

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

NOTICE OF HEARING

TO: Mayer Morganroth, Esq.
MORGANROTH & MORGANROTH
2000 Town Center, Suite 2000
Southfield, MI 48075

PLEASE TAKE NOTICE that Defendants' Motion for Partial Summary Judgment Against Count I (RICO) of Plaintiffs' complaint, pursuant to FRCP Rule 56(b) , will be brought on for hearing before the Honorable Anna Diggs Taylor in her court-room, on a date and time to be determined by this Honorable Court.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORPORATION

By /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
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ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGEMENT
AGAINST COUNT I (RICO) OF PLAINTIFFS' COMPLAINT

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STATEMENT OF ISSUES

1. Have Plaintiffs brought forth evidence to show the existence of a RICO "enterprise", which is an essential element of to their RICO claim, and without which their RICO claim is barred as a matter of law?

2. Have Plaintiffs brought forth evidence to show a "pattern of racketeering activity" which is an essential element to their RICO claim, and without which their RICO claim is barred as a matter of law?

3. Have Plaintiffs brought forth evidence to show a violation of RICO §1962(a), without which that portion of their RICO claim which is predicated upon a violation of RICO §1962(a) is barred as a matter of law?

4. Have Plaintiffs brought forth evidence to show a violation of RICO §1962(b), without which that portion of their RICO claim which is predicated upon a violation of RICO §1962(b) is barred as a matter of law?

5. Have Plaintiffs brought forth evidence to show a violation of RICO §1962(c), without which that portion of their RICO claim which is predicated upon a violation of RICO §1962(c) is barred as a matter of law?

6. Have Plaintiffs brought forth evidence to show a violation of RICO §1962(d), without which that portion of their RICO claim which is predicated upon a violation of RICO §1962(d) is barred as a matter of law?

7. Have Plaintiffs brought forth evidence to show that they were injured in their business or property by reason of a violation of RICO §1962?

8. Are Plaintiffs barred from pursuing their RICO claim as a matter of law because to do so is to exploit client confidences and overreach for fees and act as attorney - turned -

litigant in an action against former clients other than an action strictly for fees, all of which is in violation of the Michigan Rules of Professional Conduct and other ethical principles and therefore Plaintiffs are barred from pursuing their RICO claim as a matter of law?

I. INTRODUCTION

The MORGANROTH Plaintiffs have a history of burdening this Honorable Court with specious and insupportable RICO claims. DeLorean v. Cork Gully, 118 B.R. 932 (E.D. Mich. 1990). Fortunately, this Honorable Court has a history of recognizing and disposing of such meritless claims by summary judgment before the burden becomes insufferable for court and parties alike. Id., at 939-946. Defendants' instant motion seeks to dispose of yet another meritless MORGANROTH RICO claim before it imposes on the Court and parties further unnecessary and unjustifiable burden, wasted time and expense.

As analyzed by Judge Zatkoff, MORGANROTH's claims in DeLorean v. Cork Gully were "specious", "inconceivable", "wholly unbelievable" and had "absolutely no merit". Id. at 943. The RICO claim in particular was full of obvious flaws, as Judge Zatkoff found: that MORGANROTH's allegations of mail fraud and wire fraud were defective and failed to show that defendants acted fraudulently (Id. at 940-942); that the mail fraud/wire fraud allegations also failed to show that the alleged misrepresentations intended to deceive plaintiffs out of money or property (Id. at 943); that the fraud allegations based on reliance on statements by adversaries were "wholly unbelievable" (Id. at 943); that none of the allegedly fraudulent statements were misrepresentations at all (Id. at 943); that MORGANROTH alleged acts of wrongdoing which were not even RICO predicate acts (Id. at 944); that MORGANROTH had no evidence of a RICO violation, no evidence of a "pattern of racketeering activity", and no evidence of an injury "by reason of" a RICO violation (Id. at 944-946). As will be shown hereinbelow, MORGANROTH did not learn from Judge Zatkoff's wise counsel, and thus the instant RICO claim is equally flawed and "wholly unbelievable".

This motion for partial summary judgment focuses upon, attacks and seeks judgment against the Count I RICO claim in Plaintiffs' Complaint. It is respectfully submitted that as a matter of law and as a matter of fact, Count I of Plaintiffs' Complaint cannot survive the rigors of summary judgment analysis pursuant to Rule 56 and must therefore be dismissed.

Behind the shrill rage and thunder of MORGANROTH's mudslinging RICO claim, the real dispute between the parties to this action is nothing more than a simple, garden-variety fee dispute, not unlike disputes which occur on a daily basis between an attorney and client over the attorney's compensation. Such disputes are commonly resolved by examination of the fee agreements, if any, the work done, hours spent, results achieved, quality of representation and other factors routinely applied to test and determine the quantum of compensation. In fact, Counts III through XII of the Complaint assert standard contract and quasi-contract causes of action for the recovery of claimed attorneys fees and expenses.

Plaintiffs, however, have transformed a relatively routine attorney/client fee dispute into a roaring monster of unnecessary complexity and difficulty. This transformation has been accomplished by engrafting upon the simple fee dispute the unnecessary and unsupported RICO claim. Not content to obtain provable recompense for the services rendered, Plaintiffs herein seek to profit from their representation of Defendants by obtaining some $10,400,000 in damages (nearly $5,600,000 more than Plaintiffs' own calculation of the maximum claimed fees

owed) and then treble such damages under the provisions of RICO to an unconscionable $30,000,000.[1]

Plaintiffs' RICO claim is a blatant misuse and abuse of the RICO statute. "The purpose of RICO is to eliminate 'the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce.'" Yellow Bus Lines v. Local Union 639, 913 F.2d 948, 954 (D.C.Cir. 1990), cert. denied, 111 S.Ct. 2839 (1991), citing and quoting from S.Rep. No. 617, 91st Cong., 1st Sess. 76 (1969). "The statute was not designed to reach every act of corruption or petty crime committed in a business setting, but was passed in order to attack 'the use of force, threats of force, enforcement of illegal debts, and corruption in the acquisition or operation of business.'" Yellow Bus Lines at 954, quoting from S.Rep. No. 617, 91st Cong., 1st Sess. 76, 81 (1969). As the language from Yellow Bus Lines shows, Congress never intended RICO to be used as Plaintiffs have used it here, to transform a simple attorney-client fee dispute into all-out litigation warfare.

As this Honorable Court will learn through this motion for summary judgment, Plaintiffs have no evidence whatsoever to support their sham RICO claim. Plaintiffs have misused the RICO statute and misused judicial process in their attempt to transform a simple attorney/client fee dispute into a $30 million RICO bonanza. The Sixth Circuit has taken a dim view of Plaintiffs trying to turn simple contract disputes into RICO treble

---

[1]In asserting this RICO claim, Plaintiffs allege various claimed damages which are not even recoverable under RICO. (See, Complaint ¶62F, p. 37 and Fleischhauer v. Feltner, 879 F.2d 1290, 1300 (6th Cir. 1989) cert. denied, 493 U.S. 1074 (1990).

damage windfalls. Palmer v. Nationwide Mut. Ins. Co., 945 F.2d 1371, 1375 (6th Cir. 1991).

As this brief will show, upon critical examination, the meritless and specious nature of the RICO cause of action is revealed. Moreover, the RICO cause of action arises from and rests upon a fundamental abuse by the Plaintiffs of the attorney/ client relationship which should not be countenanced by the Court. An attorney cannot be allowed to obtain information, insight, knowledge and understandings of his client's affairs during ten years of representation and then turn such knowledge against the client in the form of a RICO claim seeking $30 million in treble damages. Such extortionate action by an attorney is an act of legal treachery which violates every tenant of professional and ethical responsibilities and disqualifies the Plaintiffs from asserting the RICO claim.

As established hereinbelow, Plaintiffs have no evidence to establish the most fundamental elements of a RICO claim, and Plaintiffs have violated ethical standards even bringing such a claim. This Honorable Court must issue summary judgment against MORGANROTH's sham RICO claim so that the parties can proceed to court to determine the real dispute in this case, which is the fee dispute and DELOREAN's defenses thereto.

II. THE PARTIES AND THE PLEADINGS

This case may be most easily understood by an explanation of the parties and what brought them together in this proceeding. The Plaintiffs in this matter are MAYER MORGANROTH and the partnership of MORGANROTH & MORGANROTH (hereinafter "MORGANROTH"). The Complaint alleges MAYER MORGANROTH to be an attorney and MORGANROTH & MORGANROTH a partnership formed to practice law. (Complaint ¶2, p.2, ¶1, p. 1-2).

The Defendants are JOHN Z. DELOREAN an individual presently residing in New Jersey and ECCLESIASTES 9.10-11-12, INC. a Delaware corporation. In response to interrogatories, MORGANROTH contends that the members of the RICO "enterprise" include the Defendants, Colin Chapman, Fred Bushell, GPD, Cristina Holding Corporation, Cristina Corporation and Roy Nesseth. Conspicuously absent from any page, paragraph or line of MORGANROTH's 56-page, 168 paragraph Complaint is any reference to any of these alleged members of the RICO of "enterprise" except for ¶43B on pp. 16-17.[2]

MORGANROTH's Complaint alleges that Plaintiffs were associated with DELOREAN from November 1982 until February 2, 1993 and during such period provided legal services with regard to "in excess of 30 separate cases." (Complaint ¶11, p. 4). Further, MORGANROTH's Complaint alleges that he was "responsible" for acquittal of DELOREAN in two criminal cases (although he was never counsel of record); that he saved all of DELOREAN's assets and that he advised and represented DELOREAN, "on a daily basis in connection with Defendants' business, financial and real estate dealings" during the period from November 1982 until February 2, 1993. (Complaint ¶14, pp. 5-6).

In Count 1 of MORGANROTH's Complaint, Plaintiffs allege that Defendant DELOREAN "had and currently has control over the management and operation of the foregoing enterprise." (Complaint ¶40, p. 15). This supposed "enterprise" allegedly

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[2]The non-existence of an "enterprise", particularly an "enterprise" containing GPD, Fred Bushell and Colin Chapman will be demonstrated below.

consisted of the members referred to above. Paragraph 42 of the Complaint alleges a "pattern of racketeering" consisting of "ten different fraudulent, unlawful and wrongful schemes to defraud Plaintiffs and other third parties." (Complaint ¶42, p. 15).[3] Paragraph 43 of the Complaint and its subparts allege the "schemes" which MORGANROTH contends constitutes the "pattern of racketeering" supportive of the RICO claim. (Complaint 143, pp. 15-23). Absent from the allegations with regard to these alleged of "schemes" is a pleading of the specific acts allegedly constituting the violation of the mail and wire fraud statutes which underlie a RICO cause of action. Thus, there are no facts alleged in the Complaint which evidence violation of 18 U.S.C. §1341 or 1343 such as to support the RICO claim.

MORGANROTH's Complaint alleges numerous violations of 18 U.S.C. §1341 and §1343 with regard to his claimed attorneys fees. (Complaint ¶46, pp. 26-32). MORGANROTH fails, however, to plead with specificity the alleged fraudulent representations and misrepresentations. Moreover, Plaintiffs plead that the Defendants further violated 18 U.S.C. §371 as part of the "pattern of racketeering". MORGANROTH has previously been instructed by the court that violation of such section does not

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[3]A demonstration of a RICO "pattern of racketeering" is essential to maintenance of a RICO cause of action. As will be demonstrated below, MORGANROTH cannot satisfy the burden of demonstrating such a "pattern of racketeering". Furthermore, "fraudulent, unlawful and wrongful schemes" in and of themselves do not constitute a violation of the RICO statute and to be "predicate acts" upon which any RICO claim may rest, must constitute violations of the specific and strictly applied mail and wire fraud statutes.

constitute requisite "predicate acts" under the RICO statutes. MORGANROTH pleads them nonetheless.

In paragraph 54 of the Complaint, MORGANROTH alleges that through a "pattern of racketeering activity" the Defendants acquired and maintained an interest in or control of the enterprise. (Complaint p. 34). In paragraph 55 of the Complaint, MORGANROTH alleges that the enterprise involved itself in the activities of which effect the interstate or foreign commerce as that phrase is used in 18 U.S.C. §1962(b). (Complaint p. 35). In the matter of DeLorean v. Cork Gully, MORGANROTH pled and prosecuted a RICO cause of action. Judge Zatkoff of this Court, held that the identical language pled by MORGANROTH in that proceeding failed to allege the requisite RICO injury and failed to survive the defendants' motion for summary judgment. DeLorean v. Cork Gully, supra at 946. MORGANROTH pleads it nonetheless.

Paragraph 62 of MORGANROTH's Complaint alleges that Plaintiffs were "injured by reason of the aforementioned activities, schemes to defraud, the violations of federal law, and the patterns of racketeering activity to wit...." (Complaint p. 36). Again, such allegation fails to support a RICO claim. DeLorean v. Cork Gully, supra at 946. No where in MORGANROTH's Complaint is it alleged that MORGANROTH was injured "by reason of" the use or investment in the "enterprise" of income etc. derived from a "pattern of racketeering". To the contrary, the Complaint merely pleads that MORGANROTH was injured by reason of the predicate acts or the "pattern of racketeering" itself. At a minimum, under Section 1962(a) and (b) such allegations are wholly inadequate. As Judge Zatkoff told MORGANROTH in the Cork Gully case: "In sum, the proximate cause of plaintiff's injuries as alleged in their complaint is defendants' alleged acts of racketeering themselves. Therefore,

plaintiffs RICO claims brought under Section 1962(a) and (b) do not satisfy the requirement that the injury be "by reason of" the use or investment, or the acquisition or control of an interest. DeLorean v. Cork Gully, supra at 946.

Defendants previously moved for dismissal pursuant to Rule 12 predicated upon Plaintiffs' failure to sufficiently plead a RICO cause of action. While the Complaint survived said motion, Plaintiffs must produce evidence to support this pleading and must show why the RICO Count should not, as a matter of law, fail. It is respectfully submitted that Plaintiffs can do neither.

III. ARGUMENT

A. MORGANROTH'S RICO CLAIM AGAINST FORMER CLIENTS DELOREAN AND ECCLESIASTES IS BARRED AS A MATTER OF LAW AND PUBIC POLICY AS A FLAGRANT MISUSE OF CLIENT CONFIDENCES IN VIOLATION OF PROFESSIONAL ETHICS AND RULES OF PROFESSIONAL RESPONSIBILITY.

There is no question that an attorney's legal action against former clients must be dismissed if maintenance of such action violates the attorney's ethical obligations to the former clients. Cannon v. U.S. Acoustics Corp, 398 F.Supp. 209, 228 (N.D.Ill. 1975), rev'd in part, 532 F.2d 1118, 1120 (7th Cir. 1976). Richardson v. Hamilton Int'l Corp., 469 F.2d 1382, 1384-86 (3d.Cir. 1972). MORGANROTH's RICO claim violates ethical obligations to DELOREAN and ECCLESIASTES and must be dismissed.

MORGANROTH's RICO claim is an outrageous affront to and violation of the Michigan Rules of Professional Conduct and other well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients, and which prohibit an attorney from

exploiting such confidences and secrets for his own benefit or advantage.[4]

In an act of legal treachery, MORGANROTH exploits the information and confidences he gathered during ten years as Defendants' attorney to manufacture the fictions and half-truths which make up the RICO allegations, then adds an audacious $30 million damage claim which is nothing more than a shameless and transparent attempt to shake down Defendants and extort a settlement. Such conduct is unconscionable. Pelletier v. Zweifel, 921 F.2d 1465, 1522, (11th Cir. 1991), reh'g denied, 931 F.2d 901, cert. denied, 490 U.S. 1081.

This Honorable Court has a duty to supervise the conduct of its members, to maintain public trust and confidence in the legal profession, and to act when an attorney's actions carry even the appearance of impropriety. Richardson v. Hamilton int'l Corp., 469 F.2d 1382, 1385-86 (3d Cir. 1972), cert. denied, 411 U.S. 986 (1973). Because attorneys have been granted significant privileges in our society, they must adhere scrupulously to a standard of proper dealing. General Elec. Co. v. Valeron Corp., 428 F.Supp. 68, 74 (E.D.Mich. 1977). An attorney's ethical duties must be strictly enforced to protect and encourage the client's free and open disclosure to the attorney, lest the client "justifiably fear that information he reveals to his lawyer on one day may be used against him on the next." Emle

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[4]See, for example, Michigan Rules of Professional Conduct (hereinafter MRPC) 1.6 and 1.9. ABA Model Code of Professional Responsibility (hereinafter ABA Code), Canon 4, Canon 9, Disciplinary Rule 4-101. ABA Model Rules of Professional Conduct, (hereinafter ABA Rules), Rule 1.6.

Industries, Inc. v. Patentex, Inc. 478 F.2d 562, 570-571 (2nd Cir. 1973). Cannon I, 398 F.Supp. 209, 221, 224 (N.D.Ill. 1975).

The federal courts are particularly sensitive to abuses in Civil RICO claims. One court has stated,

> "At a time when the federal courts -- which are a scarce dispute resolution resource, indeed -- are straining under the pressure of an ever-increasing case load, we simply cannot tolerate this type of litigation. Particularly with regard to civil RICO claims, plaintiffs must stop and think before filing them. If used correctly, the civil RICO provisions may have many salutary effects. When used improperly, as in this case, those provisions allow a complainant to shake down his opponent and, given the expense of defending a RICO charge, to extort a settlement. Such improper use of the civil RICO provisions comes at the expense of the federal judiciary and those who need ready access to the courts." [Emphasis in original]. Pelletier at 1522.

This Honorable Court must not allow predatory practices by attorneys against former clients. Sending this RICO claim forward would declare open season on clients and open the door to any overreaching attorneys who would use the threat of RICO treble damages to extort excessive fees from their clients, just as MORGANROTH is attempting to do to DELOREAN and ECCLESIASTES in this action.

As attorneys practicing in this Honorable Court, MORGANROTH must comply with the Michigan Rules of Professional Conduct. Eastern District of Michigan, Local Rule 111.1(d)(2).

MRPC 1.6 states, in pertinent part:

> "(b) Except when permitted under paragraph (c), a lawyer shall not knowingly: (1) reveal a confidence or secret of a client; (2) use a confidence or secret of a client to the disadvantage of the client; or (3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.
>
> (c) A lawyer may reveal: ...(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct."

The attorney's strict duty to protect client information continues even after termination of the attorney-client relationship. MRPC 1.9.

The protection in MRPC 1.6 is broader than the attorney/client privilege. As defined in MRPC 1.6(a) a "confidence" is information protected by the attorney/client privilege, while a "secret" is "other information gained in the professional relationship...the disclosure of which would be embarrassing or would be likely to be detrimental to the client." Thus the attorney is prohibited from using against the client or former client both privileged information and other information learned as a result of the representation. This prohibition against disclosure exists even if the information is part of a public record, is available from other sources, or comes to the attorney from other sources. General Elec. Co., supra at 74. Emle Industries, supra at 572-573. H. Drinker, Legal Ethics, 135 (1953).

One exception to the rules against disclosure appears in MRPC 1.6(c)(5) quoted above. However, as that rule states clearly, the attorney may reveal only the information "necessary" to support the fee claim or to defend claims of wrongdoing. MORGANROTH's RICO allegations reveal client information far beyond that "necessary" to establish the fee claim or defense Defendants' claims of wrongdoing.

Under the well-established "necessity" standard, MORGANROTH may only disclose information necessary to protect his own rights and should not disclose more than is necessary for his own protection. Mitchell v. Bromberger, 2 Nev. 345, 349 (1866). 2F. Mechem, A Treatise on the Law of Agency, Section 2313 (2d Ed. 1914). 5 B. Jones, Commentaries on Evidence, Section 2165 (2d Ed. 1926). ABA Opinions of the Comm. on Professional Ethics, No. 19 (1930), No. 250 (1943) (attorney should "carefully avoid any disclosure not clearly necessary to obtaining or defending his rights"). First Federal Sav. & Loan v. Oppenheim, Appel, Dickson, 110 F.R.D. 557, 567 (S.D.N.Y. 1986). In Re Nat. Mortg. Equity Corp. Mortg. Pool Cert., 120 F.R.D. 687, 692 (C.D.Cal. 1988).

Nor may MORGANROTH unilaterally decide what is "necessary" to protect their rights. A lawsuit between attorney and client:

> "...does not entitle the attorney to rummage thorough every file he has on that particular client (regardless of its relatedness to the subject matter of the present case) and to publicize any confidential communication he comes across which may tend to impeach his former client. At the very least, the word 'necessary' in the disciplinary rule requires that the probative value of the disclosed material be great enough to

outweigh the potential damage the disclosure will cause to the client and to the legal profession." [Footnotes omitted]. Levin v. Ripple Twist Mills, Inc., 416 F.Supp. 876, 886-887 (E.D. Pa. 1976).

The determination of what is "necessary" for an attorney's defense against claims by the former client depends on the claim's content. Heartbreak Cabaret v. Cruz & Toledo Restaurant, 699 F.Supp. 1066, 1071 (S.D.N.Y. 1988).

MORGANROTH's RICO claim is not "necessary to establish or collect a fee". MRPC 1.6(c)(5). In fact, MORGANROTH has pled 10 other counts in the Complaint to establish and collect the disputed fee. The only way the reckless RICO allegations could help MORGANROTH collect a fee is by aiding the extortion of a settlement from DELOREAN and ECCLESIASTES in avoidance of further MORGANROTH mudslinging, or by prejudicing a judge and jury with classic inadmissible "bad man" evidence[5] so that dislike of DELOREAN and ECCLESIASTES would translate into a judgment in favor of MORGANROTH.[6]

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[5]Federal Rules of Evidence, Rules 404, 403.

[6]Any such "fee" settlement or judgment in excess of fees actually owed would be clearly excessive and therefore violate MRPC 1.5 which prohibits excessive fees to attorneys. In fact, MORGANROTH's $30 million RICO claim and the $10 million fraud/punitive damages claim in Complaint Count II can both be viewed as unconscionable fee-gouging in violation of MRPC 1.5 which is another ground for dismissing those two claims as a matter of law.

Nor is MORGANROTH's RICO claim "necessary" to "defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct." MRPC 1.6(c)(5). Defendants' Amended Answer alleges that many of the services provided by MORGANROTH were negligently performed, unnecessary, unauthorized, or necessitated by and/or directly caused by MORGANROTH's negligence, breach of fiduciary duty, fraud or breach of contract. (See Amended Answer at ¶¶8-12, 14, 21, 37, 40, 49, 51, 57, 60, 63, 64, 66, 67, 71, 76).

But MORGANROTH's proper defense against the allegations in the Amended Answer is to prove that there was no wrongdoing by MORGANROTH regarding the legal services provided, not to prove a RICO claim against Defendants. Again, the only "defense" afforded by the meritless RICO claim is to coerce Defendants into a settlement or to prejudice the court and the jury into ignoring Defendants' claims and defenses. These cannot be the "necessary" disclosures contemplated by the ethical rules.

In sum, MORGANROTH's RICO claim is not "necessary" to collection of the fee or to defend against Defendants' claims of impropriety. The exception in MRPC 1.6(c)(5) does not apply. Therefore, MORGANROTH has exploited the confidences and information of his former clients for his own benefit and to their detriment in violation of MRPC 1.6. Such violation of the ethical rules is grounds for judgment against the RICO claim as a matter of law. Cannon v. U.S. Acoustics Corp., 398 F.Supp. 209, 228 (N.D.Ill. 1975), rev'd in part, 532 F.2d 1118, 1120 (7th Cir. 1976). Richardson v. Hamilton Int'l Corp., 469 F.2d 1382, 1384-86 (3d.Cir. 1972).

In Cannon I, 398 F.Supp. 209, (N.D. Ill. 1975) attorney Charles B. Cannon and three other individual plaintiffs brought a six-count complaint against two corporations. Attorney Cannon

and the other plaintiffs were shareholders in the defendant corporations, and the six counts in the complaint included derivative shareholder claims as well as personal claims. Attorney Cannon had previously represented the corporate defendants for 12 years in a "multitude" of legal matters. Id. at 227-228. Defendants moved to disqualify Cannon as a party plaintiff based on his prior professional representation of defendants in legal matters substantially related to the action by Cannon and the other plaintiffs against the defendant corporations. The Cannon I court agreed with defendants and disqualified attorney Cannon as a party plaintiff. Id. at 228.

The Cannon I court relied on ABA Code, Canon 4, which states, "A Lawyer Should Preserve the Confidences and Secrets of a Client", and also on Ethical Considerations (EC) 4-4 and 4-5, which follow Canon 4. These provisions of the ABA Code set forth the same client protections and prohibitions against attorney disclosure as MRPC 1.6 and 1.9. For example, EC 4-5, states in pertinent part:

> "A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes."

The Cannon I court found that attorney Cannon's legal action against his former clients violated his ethical duty not to use the client's own information against them, because the matters and issues in Cannon's pending action were substantially related to the matters or course of action in Cannon's prior representation of the clients, and because Cannon might have acquired information during the prior representation which was related to the subject matter of his pending action. Cannon I at

223, 228, citing T.C. Theater Corp. v. Warner Bros. Pictures, 113 F.Supp. 265 (S.D.N.Y. 1953). See also Emle Industries, supra at 571.

The party moving for disqualification need not prove that confidences or secrets were disclosed to the attorney. Disclosure is assumed once a substantial attorney-client relationship is established. Cannon I at 223. Emle Industries at 571.

The Cannon I court reviewed the evidence before it which showed that attorney Cannon had represented the defendant corporations for 12 years, had performed a "multitude of legal matters" for them during that time, and that his representation was during the same time period in which the wrongs against the corporations which were the basis of his claims allegedly occurred. Based on that evidence, the court concluded that Cannon might have acquired information in the course of the former representation which was substantially related to the pending suit. On that basis, the court determined that Cannon's pursuit of his legal action against his former clients violated his ethical duties as an attorney, and disqualified Cannon as a party plaintiff. Cannon I at 227-229.

In Cannon II, 532 F.2d 1118, the Seventh Circuit affirmed the judgment in Cannon I in all respects except as to Count VI, attorney Cannon's claim for recovery of unpaid legal fees for services provided to defendant corporations during the period of his representation. The net result of Cannon II therefore was a finding that attorney Cannon was appropriately disqualified from acting as a party plaintiff as to those counts of his complaint which threatened ethical violations, but he was allowed to go forward as to his fee claim.

Cannon I and II are directly on point with the instant case. In Cannon, the disqualified attorney represented the defendants for 12 years during which time he performed services

in a "multitude of legal matters" on their behalf. In this case, MORGANROTH alleges that he represented DELOREAN and LOGAN for over ten years and that said representation was "extensive", encompassed "in excess of 30 separate cases", and was rendered "in connection with a multitude of business, financial, and real estate matters". (MORGANROTH Complaint, ¶¶9-12).

In Cannon, attorney Cannon's representation of defendants covered the same period as the events alleged in Cannon's complaint. In this case, MORGANROTH alleges representation of DELOREAN and LOGAN from 1982 through 1993, a period which encompasses at least seven of the ten "schemes" alleged in MORGANROTH's RICO claim. (MORGANROTH Complaint, ¶43D-J). As to the other three "schemes" alleged at MORGANROTH Complaint ¶¶43A-C, there is no question that MORGANROTH received information from DELOREAN and LOGAN regarding these matters during the period of MORGANROTH's representation of DELOREAN and LOGAN. DB Aff., Exh. 1, ¶¶19-27; Exh. 3, ¶8; Exh. 10, pp. 4, 7).

In Cannon, the court disqualified attorney Cannon as a party plaintiff as to all claims except his claim for unpaid legal fees because it was clear that in the course of his former representation of defendants he might have acquired information substantially related to his pending suit. In Cannon, there was no claim that Cannon had actually used the client's information against them. The mere possibility that he might do so warranted disqualification.

In this case, this Court must disqualify MORGANROTH as a party plaintiff as to all claims except those claims seeking unpaid attorney fees because it is clear that during the former representation of DELOREAN and LOGAN, MORGANROTH

might have acquired and did in fact acquire information which is substantially related to the instant action. In this case, it is not a mere possibility that MORGANROTH will use DELOREAN and ECCLESIASTES' information against them. MORGANROTH has already exploited the information to conjure up his RICO claim, and he will continue to exploit such information as long as the RICO claim exists. If the possibility of an ethical violation dictated dismissal of all but the fee claim in Cannon, MORGANROTH's blatant, outrageous ethical violation requires dismissal of the RICO claim in this action. This Honorable Court should therefore order summary judgment against MORGANROTH's Count I RICO claim.

B. MORGANROTH HAS NO EVIDENCE TO ESTABLISH THE EXISTENCE OF A RICO "ENTERPRISE" WHICH IS AN ESSENTIAL ELEMENT OF THE RICO CLAIM, AND THEREFORE SAID RICO CLAIM IS BARRED AS A MATTER OF LAW.

Proof of a RICO enterprise and of each Defendants' involvement in the RICO enterprise are essential elements of any RICO claim. If there is no RICO enterprise, there can be no RICO violation. Appley v. West, 832 F.2d 1021, 1028 (7th Cir. 1987). Montesano v. Seafirst Commercial Corp., 818 F.2d 423, 426 (5th Cir. 1987). United States v. Zielie, 734 F.2d 1447, 1463 (11th Cir. 1984), cert. denied 469 U.S. 1184 (1985).

A reading of the RICO statute[7] shows why this is so. RICO §1962 civil liability springs from RICO §1964(c).[8] The compensable injury under Section 1964(c) is an injury to business and property "by reason of" a violation of RICO §1962. Yellow Bus Lines v. Local Union 639, 913 F.2d 948, 954-955 (D.C.Cir. 1990). Sedima. S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). The violation of RICO does not lie in the mere commission of the predicate acts listed in RICO §1961 1). Rather, the violation of RICO occurs only when such a person engages in a pattern of racketeering activity connected to the acquisition, establishment, conduct or control of an enterprise. Calcasieu Marine Nat. Bank v. Grant, 943 F.2d 1453, 1461 (5th Cir. 1991). For example, violation of RICO §1962(a)[9] only occurs when a person uses or

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[7]The Racketeer Influenced and Corrupt Organizations Act (RICO) appears at 18 U.S.C. §§1961-68. Sections of the RICO statute will be referred to throughout this brief as, for example, RICO §1962 or Section 1962, rather than 18 U.S.C. §1962.

[8]RICO §1964(c), states: "Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee".

[9]RICO §1962(a), states, in pertinent part: "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...to use or invest directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which effect, interstate or foreign

invests racketeering income in an enterprise. Sedima at 495. As the Court observed regarding RICO §1962(a) in Grider v. Texas Oil and Gas Corp, 868 F.2d 1147, 1149 (10th Cir. 1989) cert. denied. 493 U.S. 820 (1991):

> "Significantly, the statute does not state that it is unlawful to receive racketeering income; rather ...the statute prohibits a person who has received such income from using and investing in the proscribed manner." [Emphasis in original].

As the statutory language makes clear, the prohibited use or investment must be in an enterprise. RICO §1962(a).

The violations of Sections 1962(b)[10] , (c)[11] and (d)[12] also require existence of an enterprise. The violation under

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commerce.

[10]RICO §1962(b) states: "It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which effect, interstate or foreign commerce."

[11]RICO §1962(c) states as follows: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which effect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises' affairs through a pattern of racketeering activity or collection of unlawful debt."

[12]RICO §1962(d) states: . "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

Section 1962(b) is the acquisition or maintenance of an interest in or control of an enterprise, while the violation under Section 1962(c) is the conduct of an enterprise through a pattern of racketeering activity. Sedima, supra at 495. The violation of Section 1962(d) is conspiring to violate RICO subsections 1962(a), (b), or (c). Since (a), (b), and (c) can only be violated by interaction with an enterprise as established hereinabove, a conspiracy to violate said subsections cannot exist unless an enterprise also exists. Calcasieu, supra at 1461. Manax v. McNamara, 842 F.2d 808, 812 (5th Cir. 1988). United States v. Neapolitan, 791 F.2d 489, 499 (7th Cir. 1986), cert, denied 479 U.S. 939 (1986).

RICO §1961(4) defines an enterprise as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." [Emphasis added.]

The Supreme Court, describing an "associated in fact" RICO enterprise, has stated that "The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct." U.S. v. Turkette, 452 U.S. 576, 583 (1981). The Supreme Court in Turkette also established the evidentiary requirements for proof of an "associated in fact" enterprise, stating that such an enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." Turkette, at 583.

Construing the Turkette "ongoing organization" and "continuing unit" requirements, courts have held that a RICO plaintiff "must show that some sort of structure exists within the group for the making of decisions, whether it be hierarchical or consensual. There must be some mechanism for controlling and directing the affairs of the group on an on-going, rather than an

ad hoc, basis." United States v. Riccobene, 709 F.2d 214, 222 (3rd Cir. 1983), cert. denied, 464 U.S. 849 (1983). Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 243 (5th Cir. 1988), cert. denied, 489 U.S. 1079 (1989).[13]

MORGANROTH's vague pleading gives little clue as to the identity of the enterprise, but in sworn answers to interrogatories MORGANROTH has stated "The enterprise alleged in the Complaint is an association in fact consisting of John Z. DeLorean, Ecclesiastes 9:10-11-12, Inc., Cristina Corporation, Cristina Holding Corporation, Colin Chapman, Fred Bushell, GPD, and Roy Nesseth." (See DB Aff., Exh. 4, pp. 1-2).

The discovery in this case has revealed no evidence of any "ongoing organization" comprised of DELOREAN, ECCLESIASTES, Cristina Corporation, Cristina Holding Corporation, Colin Chapman, Fred Bushell, GPD and Roy Nesseth, nor any evidence that said individuals and business entities have functioned as a "continuing unit" as required by Turkette. Indeed, the evidence is to the contrary.

The "enterprise" so conceived by MORGANROTH is a figment of MORGANROTH's conspiratorial imagination. MORGANROTH contends that this supposed ongoing organization, functioning under some hierarchial or consensual mechanism of control existed from 1978 and continues to this very day. (DB Aff., Exh. 5, pp. 865-866.) One member of this

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[13]MORGANROTH recognizes this burden of proof in ¶39 of the Complaint which alleges "The foregoing enterprise comprised formal or informal associations in fact that functioned as continuing units over time through a hierarchical or consensual decision-making structure."

alleged "enterprise", Colin Chapman, died in December 1982. Neither DELOREAN, ECCLESIASTES or any other member of this supposed "enterprise" has had any control, formal or informal, hierarchial or consensual over Colin Chapman for some time.[14] There is neither allegation nor evidence that Chapman or Bushell participated in any of these so called "attorneys fees schemes". (DB Aff., Exh. 5, pp. 861-862). There is no evidence that Roy Nesseth, an alleged member of the enterprise, participated in the supposed Eureka Scheme or any of the attorneys fees schemes. None of the attorneys referenced in the Complaint are alleged to have represented nor did they represent GPD, Colin Chapman, Fred Bushell or Roy Nesseth. In fact, Weitzman and MORGANROTH refused to speak to Nesseth and they obviously had little success in speaking with Chapman.

GPD was a Panamanian corporation doing business in Switzerland and neither DELOREAN or ECCLESIASTES had any control or owned any interest in that entity. (DB Aff., Exh. 3, ¶4). Lotus Cars Limited was a corporation owned, operated and controlled by Colin Chapman. Fred Bushell was an officer of Lotus Cars Limited. Neither DELOREAN nor ECCLESIASTES had any ownership or control over these entities or these individuals. (DB Aff., Exh. 3, ¶3). There simply is no evidence of any "hierarchical or consensual" structure for controlling the alleged members of this "enterprise" or the enterprise itself. There simply is no evidence of a "continuing unit" of the alleged individuals or entities which comprise a RICO "enterprise".

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[14]Notwithstanding his death, Colin Chapman remains, in MORGANROTH's view, a member of the enterprise to this very day. (DB Aff., Exh. 5, p. 866).

The RICO claim in MORGANROTH's Complaint alleges ten "schemes" which appear at Complaint ¶¶43A-J. Only one of those ten schemes, designated "The DMCL Scheme" at Complaint ¶43B, alleges wrongdoing by Defendants in conjunction with any other alleged "associates" of the enterprise, namely GPD, Fred Bushell and Colin Chapman. MORGANROTH's Complaint neglects to mention when this alleged "scheme" occurred, but since Colin Chapman allegedly "conspired and acted" in the "scheme" it was presumably before his death in 1982. Even if this one "scheme" had occurred, it would fall far short of establishing an enterprise, because an enterprise cannot be one that briefly flourishes and fades. It must be continuing and ongoing. Delta Truck, supra at 244. Calcasieu, supra at 1463. Landry v. Air Line Pilots Ass'n Intern. AFL-CIO, 901 F.2d 404, 433 (5th Cir. 1990), cert. denied, 498 U.S. 895 (1990). Turkette at 583.

The other nine "schemes" alleged in MORGANROTH's Complaint allege only the participation of Defendants. GPD, Fred Bushell and Colin Chapman never appear again. And the other alleged "associates", Cristina Corporation, Cristina Holding Corporation, and Roy Nesseth, are never mentioned in the entire Complaint.

The disappearance of GPD, Fred Bushell and Colin Chapman from the "scheme" of things by or before 1982 and the non-appearance of Cristina Corporation, Cristina Holding Corporation and Roy Nesseth reveal another fatal flaw in MORGANROTH's RICO claim. Once GPD, Fred Bushell and Colin Chapman dropped out of the supposed enterprise, the only remaining "associates" in the supposed enterprise were DELOREAN, the two Cristina corporations which were wholly-owned by DELOREAN, and Roy Nesseth, who was a vice-chairman of LOGAN. MORGANROTH therefore fails the

"distinctness" requirement by which the Defendant (DELOREAN and ECCLESIASTES) who allegedly violates RICO §1962(c) must be distinct from the enterprise whose affairs that Defendant is allegedly conducting. Davis v. Mutual Life Ins. Co. of New York, 6 F.3d 367, 377-378 (6th Cir. 1993). McCullough v. Suter, 757 F.2d 142, 144 (7th Cir. 1985). Old Time Enterprises v. Intern. Coffee Corp., 862 F.2d 1213, 1217 (5th Cir. 1989).

The allegations in MORGANROTH's own Complaint show clearly that after the supposed DMCL scheme in or prior to 1982, the only possible members of the purported enterprise were DELOREAN and DELOREAN-owned entities and Nesseth, vice-chairman of LOGAN. From that time on, Defendants DELOREAN and ECCLESIASTES could not violate RICO §1962(c) because there was no "distinctness" between them and the purported enterprise which would allow such a violation under the principles of Davis, McCullough, and Old Time Enterprises as cited above. It is well-established that affiliated entities such as corporations and their holding companies, corporations and their officers and agents, and corporations and their subsidiaries are not separate and distinct for purposes of RICO §1962(c). Glessner v. Kenny, 952 F.2d 702, 710-714 (3d Cir. 1991). Brittingham v. Mobil Corp., 943 F.2d 297, 302-303 (3d Cir. 1991). Atkinson v. Anadarko Bank and Trust Co., 808 F.2d 438, 440-441 (5th Cir. 1987).

Notably, the MORGANROTH "scheme" alleged at Complaint ¶43J, which is the only alleged "scheme" in which MORGANROTH could have possibly been injured, had to have occurred after 1982 because by MORGANROTH's own allegation their representation of DELOREAN did not even begin until November 1982. (MORGANROTH Complaint at ¶9). Therefore, even if MORGANROTH were able to prove the existence of the non-existent enterprise, the enterprise as they

have conceived and alleged it is not "distinct" from the Defendants themselves after 1982, and therefore Defendants could not violate RICO §1962(c) in relation to such an enterprise after 1982, and MORGANROTH's injury could not be "by reason of" such a violation.

MORGANROTH has no evidence that the alleged associates "associated together for a common purpose". MORGANROTH has no evidence to show that the alleged associates formed an "ongoing organization" or that they functioned as a "continuing unit" with a hierarchical or consensual decision-making structure. Turkette at 583. Riccobene at 222.

Nor can MORGANROTH prove the existence of the "enterprise" merely by showing proof of a "pattern of racketeering activity".[15] Turkette at 583. As the Supreme Court observed in distinguishing between "enterprise" and "pattern of racketeering activity", the enterprise is an entity, while the pattern of racketeering activity is a series of criminal acts as defined by RICO section 1961(l). Turkette at 583. Therefore, even if Morganroth presents evidence of a series of acts, those acts do not establish the enterprise/entity. Existence of the RICO enterprise is a separate element which must be proved. Turkette at 583.

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[15]Defendants will also argue hereinbelow that MORGANROTH has utterly failed to uncover the slightest evidence to establish the requisite RICO "pattern of racketeering activity". However, even if MORGANROTH somehow makes an evidentiary showing of a "pattern", that does not necessarily prove the existence of the "enterprise".

MORGANROTH's failure of proof on the essential "enterprise" element is enough, by itself, to require summary judgment against Count I (RICO) of Plaintiffs' complaint. But there is more.

C. MORGANROTH HAS NO EVIDENCE TO ESTABLISH THE "PATTERN OF RACKETEERING ACTIVITY" WHICH IS AN ESSENTIAL ELEMENT OF THE RICO CLAIM, AND THEREFORE SAID RICO CLAIM IS BARRED AS A MATTER OF LAW.

Proof of a RICO violation also requires proof of a "pattern of racketeering activity". If no such pattern exists, there is no RICO violation and no valid RICO claim. Calcasieu, supra at 1461.

As the Supreme Court has stated, violation of RICO §1962 does not occur upon a "mere commission of the predicate offenses." Sedima, supra at 496. Rather, the RICO violation is "to use money derived from a pattern of racketeering activity to invest in an enterprise, to acquire control of an enterprise through a pattern of racketeering activity, or to conduct an enterprise through a pattern of racketeering activity. §§1962(a)-(c)." [Emphasis added]. Sedima at 495. As the statutory language of RICO §§1962(a)-(c) and the Supreme Court have made clear, proof of a "pattern of racketeering activity" is essential to any RICO claim.

RICO §1961(1) defines "racketeering activity". Only those criminal acts listed in RICO §1961(1) may constitute "racketeering activity". DeLorean v. Cork Gully, supra at 939-940. Lewis v. Sporck, 612 F.Supp. 1316, 1325 (D.C.Cal. 1985).

RICO §1961(5) defines "pattern of racketeering activity" as requiring at least two acts of "racketeering activity".

Construing the language of RICO §1961(5) the Supreme Court has found that in order to prove a pattern of racketeering activity a plaintiff "must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." [Emphasis in original]. H.J. Inc. v. Northwestern Bell Telephone Company, 492 U.S. 229, 239 (1989). Sedima, at 496. MORGANROTH must thus produce evidence to show that Defendants DELOREAN and ECCLESIASTES have committed RICO predicate acts as listed in RICO §1961(l) which are related and which have continuity.

RICO predicate acts are "related" if they have "The same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." H.J. Inc. at 240. Sedima, at 496, n.14. MORGANROTH has no evidence to show that DELOREAN and ECCLESIASTES committed RICO predicate acts much less that they are "related".[16]

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[16]Before MORGANROTH even begins the attempt to prove a "pattern of racketeering activity" characterized by "relatedness" and "continuity", MORGANROTH must first be able to prove every element of each of the alleged section 1961(l) predicate acts. United States v. Watchmaker, 761 F.2d 1459, 1471 (11th Cir. 1985), cert. denied, 474 U.S. 1100 (1986). Without evidence to support an alleged predicate act, the predicate act may not be considered in the determination of whether there is a "pattern of racketeering activity". Lou v. Belzberg, 728 F.Supp. 1010, 1025 (S.D.N.Y. 1990). Obviously, if there are insufficient predicates or no predicates at all, there can be no RICO "pattern or racketeering activity." Asch v. Philips, Appel & Walden, Inc., 867 F.2d 776, 777 (2d cir. 1989), cert. denied,

MORGANROTH's Complaint alleges the RICO predicate acts in ¶¶46A-F. These paragraphs allege violations of 18 U.S.C. §1341 (mail fraud), §1343 (wire fraud), §1952 (racketeering), §1956 (money laundering) and §1957 (illegal monetary transactions). MORGANROTH's Complaint ¶46D also alleges a violation of 18 U.S.C. §371, which is not even a RICO predicate act under RICO §1961(1). It is not unusual for a specious MORGANROTH RICO claim to allege conduct which does not even constitute a predicate act under RICO. DeLorean v. Cork Gully, supra, at 944.

While the Complaint at ¶¶46A-F alleges in a conclusory, non-specific fashion, commission of supposed "predicate acts", not a single such act is tied to any of the alleged "schemes" which forms the supposed pattern of racketeering activity. Though MORGANROTH contends the "enterprise" to have existed from 1978, there is not even an alleged "predicate act" preceding 1985. (Complaint, p. 26, ¶46A2). Further, there is not a single predicate act by any named Defendant nor any supposed member of the enterprise with regard, related to or in connection with any of the supposed victims of any "racketeering activity" other than the Plaintiffs. Not only is allegation of specific predicate acts absent with regard to the various "schemes" allegedly comprising the "pattern of racketeering activity", but so too is the evidence of any such predicate acts.

The Complaint alleges the commission of predicate acts at ¶¶46 A-F in a completely conclusory fashion, giving no clues as to when supposedly DELOREAN and ECCLESIASTES committed these acts, how they committed the acts, or who they committed these acts with and against.

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493 U.S. 835 (1989).

Even if it is assumed, arguendo, that some provable "predicate acts" existed with regard to the alleged "schemes", it is clear from the Complaint that the purposes, results, participants, victims and methods of commission of such alleged "schemes" are dissimilar, are not related and do not comprise a "pattern of racketeering activity". The purported purpose of The DRLP scheme and The DMCL scheme was to "satisfy [Defendants'] own personal financial obligations and remove encumbrances on their own property" and divert money "for their own personal use". (MORGANROTH Complaint at ¶¶43A and B). The purported purpose of The Eureka Federal Savings and Loan Scheme was to raise funds to reopen the DMCL auto plant in Belfast, Ireland. (MORGANROTH Complaint ¶43C). The purported purpose of The Creditors Scheme was to acquire the assets of Logan Manufacturing Company at less than fair market value. (MORGANROTH Complaint at ¶43D). The purported purpose of The Howard Weitzman Scheme, The Kenneth McConnell Scheme, The Bill Simon Scheme, The Thomas Kimmerly Scheme, The Jack Weinberg Scheme, and The Morganroth Scheme (MORGANROTH Complaint ¶¶43E-J) was to obtain legal services without paying.

The four schemes alleged in ¶¶43A-D have purported purposes which are dissimilar from each other, and are completely dissimilar from the purported purposes of the schemes alleged in Complaint ¶¶43E-J (hereinafter "The Attorney Schemes"). The Attorney Schemes appear to have similar purposes, but MORGANROTH has no evidence to establish that the Attorney Schemes had similar results, participants, victims, or methods of commission. In fact, the evidence shows that the Attorney Schemes were not schemes at all, and involved no fraud whatsoever.

1. THE ALLEGED "HOWARD WEITZMAN SCHEME"

There is no "Howard Weitzman Scheme" and MORGANROTH is without evidence to sustain the existence of any such "scheme". MORGANROTH pleads that DELOREAN made false representations that Weitzman would be paid $2.5 million in attorney fees and that, in fact, DELOREAN paid $1.1 million and "refused and failed to satisfy the $1.4 million dollar balance."[17] (Complaint, ¶43E, pp. 19-20). The facts do not bear out this pleading and MORGANROTH knows or should know these facts to be inaccurate. Nonetheless, in a makeshift effort to allege a "scheme", MORGANROTH attempts to plead a fraudulent "Weitzman Scheme".

As of March and April 1984, Weitzman represented DELOREAN in three matters, the Los Angeles criminal prosecution, the DMC Bankruptcy matters and the Detroit criminal matters. (DB Aff., Exh. 22). After October 1982 and continuing to March and April 1984, DELOREAN was in severe financial difficulty and subject to existing bail obligations (DB Aff., Exh. 19) as well as court orders restraining and restricting his ability to control and obtain funds from Logan Manufacturing. (Complaint Paragraph 17). As of March and April 1984, DELOREAN was strapped for cash. (DB Aff., Exh. 6, p. 160).

From December 20, 1982 until January 30, 1984, totally contrary to the allegations of MORGANROTH's Complaint, Weitzman received cash payments aggregating $628,827.88. (DB

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[17]Absent from such pleading, of course, if any allegation of the required predicate acts of mail fraud and/or wire fraud to support a RICO cause of action.

Aff., Exh. 6, p. 156). Weitzman was concerned about beginning the Los Angeles trial and wanted some security for his fees. (DB Aff., Exh. 6, pp. 160-161). With regard to such fees, and contrary to allegations of MORGANROTH's Complaint, DELOREAN did not represent to Weitzman he would pay $2.5 million dollars. (DB Aff., Exh. 6, pp. 152-153). To the contrary in April 1984, in order to pay Weitzman, DELOREAN transferred to Weitzman by quit claim deed an unencumbered piece of property in California known as Pauma Valley. (DB Aff., Exh. 22). Said transfer was in good faith and without fraudulent intent on the part of either Weitzman or DELOREAN. (DB Aff., Exh. 6, p. 163; Exh. 22). At the time of transfer, the value of Pauma Valley was $2.5 million dollars. (DB Aff., Exh. 22). Contrary to the allegations of MORGANROTH's Complaint, by April 1984, Weitzman had received in excess of $3.1 million dollars in consideration for his legal services.

Pauma Valley was subsequently sold by Weitzman for $1.1 million dollars. (DB Aff., Exh. 6, p. 153). The diminution in value in Weitzman's view was attributable to the malicious prosecution of an action for fraudulent conveyance by the trustee of the DMC bankruptcy estate. (DB Aff., Exh. 6, pp. 163-164). It was Weitzman's view that parties other than DELOREAN were responsible for and legally liable for the difference between the $2.5 million dollar value of Pauma Valley as transferred and the gross sales price of $1.1 million. In fact, Weitzman instituted a lawsuit against such persons to recover damages for the $1.4 million dollars in attorney fees represented by the difference in the value of Pauma Valley. (DB Aff., Exh. 6, pp. 164-165; 173-174).

After sale of Pauma Valley, Weitzman did not sue DELOREAN for the alleged $1.4 million dollars in attorneys fees; to the contrary, Weitzman represented to the Los Angeles

Superior Court, through his counsel, that he made no claim against DELOREAN for such fees. (DB Aff., Exh. 13). Further, after Pauma Valley sold, Weitzman did not send DELOREAN a bill for $1.4 million dollars. (DB Aff., Exh. 6, p. 157). Contrary to the allegations of MORGANROTH's Complaint, there was never any bill for $1.4 million dollars that DELOREAN refused to pay. (DB Aff., Exh. 6, p. 157). In fact, Weitzman never sent DELOREAN a bill for $2.5 million dollars nor did he send DELOREAN a bill for any amount of money with regard to the Los Angeles case, the DMC bankruptcy proceedings, or the Michigan proceedings. (DB Aff., Exh. 6, pp. 158-159).

MORGANROTH contends that he was privy to conversations between Weitzman and DELOREAN wherein Weitzman represented to DELOREAN that should Weitzman receive $2.5 million dollars either from the sale of Pauma Valley or from DELOREAN personally that Weitzman, in fact, would refund $600,000 to DELOREAN. (DB Aff., Exh. 11, pp. 23-24).

After the Los Angeles trial in 1984, Weitzman joined the law firm of Wyman, Bautzer, Kuchel & Silbert. After trial of the Detroit criminal case, the Wyman, Bautzer firm sued DELOREAN for attorneys fees allegedly due and owing with regard to the Detroit trial. Said suit was for an entirely different amount of money than the herein alleged $1.4 million dollars. (DB Aff., Exh. 20). Moreover, said lawsuit does not allege any claim of fraud or misrepresentation by DELOREAN. (DB Aff., Exh. 6, pp. 251-253). DELOREAN cross-complained alleging the transfer of Pauma Valley included payment for legal services to be rendered by Weitzman in the Detroit matter. (DB Aff., Exh. 21).

The Wyman, Bautzer litigation was settled in April 1992. As part of that settlement, Weitzman agreed to pay approximately

$600,000 to DELOREAN. (DB Aff., Exh. 23). In essence, this settlement was precisely in accord with Weitzman's views and beliefs that the $1.4 million dollars he failed receive from Pauma Valley was the responsibility of the trustee in bankruptcy and DELOREAN's position that transfer of Pauma Valley was payment for legal services to be rendered in the Detroit matter and in accord with the concept that if he received such monies he would refund substantial sums to DELOREAN.

Weitzman has testified that DELOREAN did not make false representations to him and that the facts alleged in MORGANROTH's Complaint with regard to the $1.1 million dollar payment and the refusal to pay $1.4 million dollars are untrue. There is no "Weitzman Scheme" and MORGANROTH knows it. Nonetheless, MORGANROTH has burdened the Court with the "Weitzman Scheme" in an effort to create a RICO cause of action where one does not exist and in an effort to bring into this relatively straight-forward fee dispute collateral and irrelevant disputes long since resolved between the actual parties thereto.

2. THE ALLEGED "MCCONNELL SCHEME".

The next alleged scheme is the "McConnell Scheme". Again, MORGANROTH alleges that DELOREAN and ECCLESIASTES defrauded McConnell by making false representations that McConnell would be paid while never intending to pay, "in order to further the conspiracy itself and personally benefit." (Complaint ¶43F, p. 20). There is no "McConnell Scheme" and MORGANROTH can produce no evidence to sustain the existence of any such scheme and MORGANROTH knows it.

While the pleading of the "McConnell Scheme" suffers from the infirmities otherwise set forth herein, it suffers further from an absolute lack of evidence to support even the insufficient

allegations of the Complaint. McConnell was engaged by one Thomas Kimmerly to represent DELOREAN with regard to DELOREAN's secured claim in the DMC bankruptcy proceeding. (DB Aff., Exh. 7, p. 19:1-9). (McConnell did not represent Defendant ECCLESIASTES or its predecessor Logan Manufacturing Company). That McConnell initially negotiated an agreement while the DMC bankruptcy proceeding was in Chapter 11 regarding the validity and amount of DELOREAN's secured claim.

Thereafter, the bankruptcy proceeding was changed from a Chapter 11 to Chapter 7 proceeding. (DB Aff., Exh. 7, p. 23). Judge Graves of the United States Bankruptcy Court thereafter set the issue of the secured claim for a hearing. (DB Aff., Exh. 7, p. 28). When McConnell learned that an actual contested evidentiary hearing was to be held with regard to the secured claim, he decided to discontinue representation of DELOREAN because he was unprepared to proceed on such a matter. (DB Aff., Exh. 7, pp. 28-29). McConnell informed Kimmerly and of this fact and that they would be required to obtain other counsel. (DB Aff., Exh. 7, p. 29). Thereafter, on the recommendation of McConnell, one C. William Garratt was retained to try the matter of the secured claim. (DB Aff., Exh. 7, pp. 29-30).[18]

McConnell testified that all of his communications with regard to attorneys' fees were with Kimmerly; he did not talk to DELOREAN with regard to attorneys fees. (DB Aff., Exh. 7, p. 72). McConnell has never asserted that DELOREAN committed any act of fraud with regard to the attorneys fees. (DB Aff.,

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[18]MORGANROTH subsequently represented DELOREAN in an action against GARRATT asserting legal malpractice in the manner in which GARRATT handled the secured claim.

Exh. 7, p. 72). In fact, McConnell testified that such could not be the case since he communicated with Kimmerly with regard to the attorneys fees. (McConnell Deposition, p. 72).

McConnell's testimony is totally consistent with the facts known to MORGANROTH before filing this complaint. On February 15, 1991, MORGANROTH put on McConnell as a witness in an arbitration proceeding between GARRATT and DELOREAN. During the course of McConnell's testimony, in response to questions asked by Mr. MORGANROTH, McConnell gave the following testimony:

> "Finally my final bill, and I know Tom Kimmerly was told this and so was DELOREAN, if you don't like it, don't pay it because you have had to take money out of your pocket to get successor counsel up to speed. And predictably they relied on that and it wasn't paid. It was only $4,000.00. Who cares?" (Emphasis added). (DB Aff., Exh. 8, pp. 22-23).

There is, thus, absolutely no evidence of any "McConnell scheme". Not only did DELOREAN not make false or fraudulent representations to McConnell with regard to the fees, McConnell himself told DELOREAN not to pay the fees.

3. THE ALLEGED "SIMON SCHEME".

The Simon "scheme" which, like the others, alleges misrepresentations of a promise to pay while harboring the fraudulent intent not to, likewise does not exist.

Mr. Simon represented DELOREAN in two matters entitled Audio Systems, Inc. v. Delorean Co. et al. and the Unsecured Creditors Committee v. John Delorean et al. During the course of such representation, Mr. Simon was paid $29,419.56. (DB Aff., Exh. 16, ¶15) During the course of said

representation, certain documents were produced to the attorneys for the Unsecured Creditors Committee and the attorneys for the trustee Delorean Bankruptcy matter. Mr. Simon was the attorney representing DELOREAN with regard to production of such documents.

When Mr. Simon ended his representation of DELOREAN in October, 1983, there was a balance billed of $87,556.60. (DB Aff., Exh. 17). DELOREAN could not afford to pay such fees. (MORGANROTH Complaint, ¶17, pg. 8) In 1975, Simon sued DELOREAN for the unpaid balance. MORGANROTH represented DELOREAN in a cross-complaint against Simon alleging that Simon had been negligent in the representation of DELOREAN and that such negligence had caused DELOREAN damages and that by virtue of such negligence Simon was not entitled to recover attorneys' fees. (DB Aff., Exhs. 16 and 17).

During the course of said proceeding, MORGANROTH procured an affidavit from the aforementioned Weitzman wherein Weitzman testified that Simon was derelict in his responsibilities to and representation of DELOREAN. (DB Aff., Exh. 16). Moreover, MORGANROTH submitted an affidavit on personal knowledge as testifying to the derelictions of Simons and the damages caused to DELOREAN thereby. (DB Aff., Exh. 29). Said affidavit clearly evidences non-fraudulent conduct by DELOREAN but also MORGANROTH's personal knowledge thereof. Said litigation was subsequently settled between the parties. (DB Aff., Exh. 18). The Simon matter is now long since over and resolved between the parties actually involved. Simon did not sue DELOREAN for fraud and no evidence of fraud exists. Furthermore, there is no evidence of involvement of the supposed "Enterprise" or that any "racketeering activity" occurred with regard to the Simon matter.

As with each "scheme" discussed so far, there is absolutely no evidence or even allegation of any causal connection between the supposed "racketeering activity" and any damage sustained by MORGANROTH by reason thereof.

4. THE ALLEGED "KIMMERLY SCHEME".

MORGANROTH next alleges the "Kimmerly Scheme". Again, this is an allegation of supposed fraud against the third party which is bereft of any factual allegation of RICO predicate acts and which is lacking a demonstration of any damage caused to MORGANROTH. Additionally, there is no evidence to support any such alleged scheme.

The "Kimmerly Scheme" alleges that there is presently an outstanding and past due balance owed to Kimmerly of $3 million. (Complaint p. 22, ¶43H). Yet, Kimmerly has never billed DELOREAN for this supposedly due and owing $3 million. (DB Aff., Exh. 9, pp. 204, 287) Kimmerly never kept track of his time (DB Aff., Exh. 9, p. 247); Kimmerly has never told DELOREAN what DELOREAN supposedly owes Kimmerly (DB Aff., Exh. 9, pp. 2, 48.) and Kimmerly has had no discussions with DELOREAN about fees. (DB Aff., Exh. 9, p.204).

Kimmerly claims that DELOREAN has testified that he promised to pay Kimmerly if Kimmerly would submit a bill. (DB Aff., Exh. 9, p. 18) To date, Kimmerly has never sent a bill to DELOREAN for the supposed due and owing amount of $3 million. (DB Aff., Exh. 9, p. 287). On those occasions where Kimmerly has, in fact, submitted an invoice, he has been paid for the services rendered. (DB Aff., Exh. 9, pp. 268-269).

Broken promises are not sufficient to support a RICO cause of action. (DeLorean v. Cork Gully, supra, p. 944) Here, Mr. Kimmerly has never even billed DELOREAN for the

supposed $3 million dollars in fees and even if there was a promise to pay and even if that promise was broken, there simply is no conduct alleged or existent which gives support to a RICO scheme constituting a component part of a "pattern of racketeering activity."

5. THE ALLEGED "WEINBERG SCHEME"

The next in MORGANROTH's pleading of schemes is the "Jack Weinberg Scheme" (Complaint ¶431, p. 22). In March 1989 upon the advice of MORGANROTH, Logan Manufacturing paid to the Graubard, Mollen firm of which Jack Weinberg was a partner the sum of $221,971.52. (DB Aff., Exh. 26, pp. 192-193). This payment and others made by Logan Manufacturing upon the advice and counsel of MORGANROTH was later asserted by opponents of DELOREAN to violate a federal court order issued by Judge Peter J. Leisure of the United States District Court, Southern District of New York on January 24, 1989. The opponents of DELOREAN moved the United States District Court, Eastern District of Michigan, Southern Division for an order for appointment of special master or receiver over Logan Manufacturing Company premised upon the alleged violation of Judge Leisure's Order. (DB Aff., Exh. 31).

This matter was heard before the Honorable Gerald E. Rosen commencing on October 9, 1990. During the course of those proceedings, Judge Rosen expressed in no uncertain terms his view that the order of Judge Leisure had been violated and that he very seriously considered that contempt had occurred in that regard. (DB Aff., Exh. 24, 25). In particular, Judge Rosen viewed the payment of attorney's fees, including payments to MORGANROTH and the Graubard, Mollen firm to be in violation of Judge Leisure's order.

October 11, 1990, an agreement to resolve the matter was put on the record whereby DELOREAN was obligated to pay a principal amount of $7 million at various times in the future.

On October 15, 1990, the Graubard, Mollen firm sent to Judge Rosen a letter with extensive exhibits attempting to defend its conduct against any claims of contempt of court. (DB Aff., Exh. 27). Graubard later tried to bill DELOREAN for preparation of said letter. On this basis alone, DELOREAN had good reason to not pay and otherwise contest the Graubard billing.

In any event, the evidence is devoid of any "scheme" which constitutes a component part of a "pattern of racketeering activity."

6. THE ALLEGED "MORGANROTH SCHEME"

MORGANROTH also alleges a scheme by the "Enterprise" against him. Like the other alleged "schemes" no RICO activity exists here.

Although MORGANROTH claims representation of DELOREAN and Logan Manufacturing Company since November 1982 (Complaint p. 4, ¶11). Not until December 3, 1990, did MORGANROTH provide DELOREAN with the bill for such services. MORGANROTH now claims that he has destroyed all time sheets and calendars that would reflect time actually spent in the representation of DELOREAN and/or Logan Manufacturing Company. (DB Aff., Exh. 5, pp. 136-138). Both DELOREAN and Logan Manufacturing have previously paid to MORGANROTH substantial funds. (DB Aff., Exh. 5, pp. 194, 200, 201).

In March 1989, based upon the advice of MORGANROTH, Logan Manufacturing paid some $212,000 to MORGANROTH. (DB Aff., Exh. 26, p. 192). This payment

was subsequently asserted by DELOREAN's opponents, DSQ, as a violation of the aforementioned January 24, 1989 order of Judge Leisure. This payment also was asserted as a basis to appoint a receiver over Logan Manufacturing Company, and eventuality which would have had disastrous results to Logan. (DB Aff., Exh. 31).

In the aforementioned hearings in October 1990, Judge Rosen, of this court, expressly stated that he viewed the payment to MORGANROTH which was approved by MORGANROTH as a violation of Judge Leisure's order. (DB Aff., Exhs. 24, 25). Further Judge Rosen indicated that he seriously considered that both MORGANROTH and DELOREAN were in contempt of Judge Leisure's order. (DB Aff., Exhs. 24, 25). After such statements, MORGANROTH negotiated a settlement of the DSQ litigation which obligated DELOREAN to pay minimum of $7 million. The settlement negotiated by MORGANROTH in that matter included a release of any liability of MORGANROTH. (DB Aff., Exh. 32).

A substantial, though not yet specified portion of the attorney's fees sought by MORGANROTH are allegedly attributable to MORGANROTH's representation of DELOREAN in the matter of DeLorean v. Cork Gully. (Complaint page 39, paragraph 76). In the Cork Gully matter, MORGANROTH asserted among others, a RICO claim on behalf of DeLorean. Judge Zatkoff of this Court, on August 14, 1990, granted summary judgment as to all causes of action in said matter. In so doing, Judge Zatkoff characterized the allegations advanced by MORGANROTH as "wholly unbelievable, 'specious' and having 'absolutely no merit'." (Cork Gully, supra at 943). Judge Zatkoff further granted summary judgment on all non RICO causes of action.

MORGANROTH alleges in ¶76, pp. 39-40 of the Complaint that the fee agreement in the Cork Gully case changed from a contingency fee agreement to an hourly agreement on October 11, 1990. October 11, 1990 is the date that MORGANROTH put the settlement in the DSQ matter on the record. Part of that settlement was dismissal of the Cork Gully case without payment to DELOREAN. (DB Aff., Exh. 32). Two months before October 11, 1990, Judge Zatkoff granted summary judgment against the claims in Cork Gully. By October 11, 1990, it was clear that the contingency necessary to trigger payment of a fee to MORGANROTH would never come to pass. Having failed to bring about a result that would entitle MORGANROTH to a fee, MORGANROTH by Plaintiffs' own allegation, changed the fee to an hourly rate insuring payment without regard to the result.

Further after October 11, 1990, DELOREAN was advised that he had a potential action against MORGANROTH for malpractice and/or breach of fiduciary duties and grounds to dispute MORGANROTH's fees. (DB Aff., Exh. 34). Premised upon the proposition that MORGANROTH's own conduct had damaged DELOREAN in an amount exceeding any attorney's fees which might be owing to MORGANROTH and premised upon the proposition that much of the attorney's fees were incurred as a direct result of MORGANROTH's own conduct, DELOREAN did not pay the attorney's fees. Further, after October 11, 1990, DELOREAN had substantial reason not to pay MORGANROTH for any fees incurred in the Cork Gully case, since the condition precedent to payment of such fees, a monetary recovery by DELOREAN in said action, did not come to pass.

Thus, rather than some RICO "scheme" or some component part of a "pattern of racketeering activity"

DELOREAN had good and legitimate reasons to not pay MORGANROTH attorney's fees over and above the attorney's fees already paid.

Further, in cases where the purposes, results, participants, victims, and/or methods of commission are dissimilar, courts have held that a plaintiff fails the "relatedness" test where the predicate acts fall into two distinct categories: acts directed at the plaintiff by defendants and acts directed at other third parties by defendants. Vild v. Visconsi, 956 F.2d 560, 565-569 (6th Cir. 1992), cert. denied, 113 S.C. 99, ___ U.S. ___ (1992).

In Vild, the plaintiff alleged various predicate acts, some of which were directed at the plaintiff by the defendants and some of which were directed at other third parties by defendants. In holding that these predicate acts were not related so as to form a pattern of racketeering activity, the Vild court stated:

> "The plaintiff maintains that all of these activities, whether directly involving him or others, are related for the purpose of the pattern requirement. We do not agree. Even if the predicates within each of the two types of conduct may be somehow interrelated, the two types of alleged conduct are not related within the meaning of RICO." Vild at 566.

The four schemes alleged at Complaint ¶¶43A-D are clearly dissimilar among themselves and dissimilar to The Attorney Schemes alleged in Complaint ¶¶43E-J. The Attorneys' Schemes at first blush have an appearance of similarity until the Vild analysis is applied. Vild distinguishes alleged acts directed at MORGANROTH from alleged acts directed at other third parties. On this basis MORGANROTH's claims of "pattern of racketeering activity" fail the "relatedness" test as the plaintiffs claims did in Vild. Failure to prove the "relatedness" prong of

the pattern element is fatal to a RICO claim since the Supreme Court has made clear that a plaintiff must show relatedness and continuity. H.J. Inc. at 239. Sedima at 496 n.14.

In summary, MORGANROTH has no evidence to establish the elements of the predicate acts reached in the Complaint. Even if the predicate acts themselves were established, it is clear as a matter of law that MORGANROTH has no evidence to establish that those predicate acts formed the requisite "pattern" of racketeering activity.

It is clear what is going on here. In the absence of RICO predicate acts and without a RICO pattern, MORGANROTH has taken his ten-year confidential relationship with DeLorean and Logan, whipped up a brew of half truths, fabrications, and distortions of actual events, and thrown the whole mess at DELOREAN and ECCLESIASTES in the hopes that something will stick that looks like unsavory "racketeering activity". This Honorable Court should not allow MORGANROTH's tactics of obfuscation and imprecision to prevail. There is no evidence of predicate acts. There is no evidence of a "pattern" of predicate acts. Therefore MORGANROTH's RICO claim fails as a matter of law.

D. MORGANROTH HAS NO EVIDENCE TO SHOW A VIOLATION OF RICO §1962(a),(b),(c) or (d).

The basis for a civil RICO claim is found in RICO §1964(c) which states: "Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover three fold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." [Emphasis added.]

The statutory language makes clear that RICO's civil liability is based on a violation of RICO §1962. As previously established hereinabove, RICO §1962 is not violated merely by commission of the predicate acts. Sedima at 496. Yellow Bus Lines, supra at 954-955. Each of the four subsections (a)-(d) of RICO §1962, describes a different "violation".

1. MORGANROTH Has No Evidence To Show A RICO 41962(a) Violation.

MORGANROTH alleges a violation of RICO 1962(a). (Complaint ¶57). MORGANROTH's allegation of the Section 1962(a) violation merely parrots the statutory language and gives no clue as to how or when such violation occurred, nor does the pleading tie said violation to any of the pled "schemes".

The elements of a violation of RICO §1962(a) are easily ascertained from a reading of the statutory language. The plaintiff must prove that the defendant (1) received income derived from a pattern of racketeering activity, (2) has used or invested such racketeering (3) to acquire, establish or operate an enterprise. MORGANROTH has no proof to establish any of these elements.

MORGANROTH has no evidence whatsoever that DeLorean or Logan received any income derived from a pattern of racketeering activity. As already established hereinabove, MORGANROTH has no evidence of a "pattern of racketeering activity" because he cannot show that the predicate acts he has alleged are in any way "related" or have "continuity". Because MORGANROTH cannot establish the pattern of racketeering activity, they cannot show any income derived from the non-existent pattern.

Nor does MORGANROTH have one bit of evidence to show that defendants "used or invested" any racketeering income

in an enterprise. As previously pointed out hereinabove, MORGANROTH has no evidence whatsoever to establish the existence of a RICO enterprise because he has no evidence of an ongoing organization with a common purpose functioning as a continuing unit with a decision-making structure. Turkette, supra at 583. U.S. v. Riccobene, supra at 222. Without a RICO enterprise to use or invest the funds in, as a matter of law there cannot possibly be a violation of Section 1962(a).

2. MORGANROTH Has No Evidence To Show A Violation Of RICO §1962(b).

MORGANROTH's Complaint alleges a violation of RICO §1962(b). (Complaint at ¶54). MORGANROTH's pleading again merely parrots the statutory language giving no clue as to how or when such a violation occurred.

The elements of the violation of Section 1962(b) are again clear from the statutory language. The plaintiff must prove that the defendant (1) acquired or maintained (2) an interest in an enterprise or control of an enterprise (3) through a pattern of racketeering activity. By the statutory language the acquisition or maintenance must be through a pattern of racketeering activity.

MORGANROTH has no evidence to prove his alleged violation of RICO §1962(b). As pointed out hereinabove, MORGANROTH has no evidence of the existence of a RICO enterprise for defendants to control or gain an interest in. As further pointed out hereinabove, MORGANROTH has no evidence to establish a pattern of racketeering activity and therefore cannot show that any interest in or control of an enterprise was acquired or maintained "through" the non-existent pattern. Finally, MORGANROTH has no evidence whatsoever to show that an interest in or control of an enterprise was ever

"acquired" or "maintained" by defendants. As a matter of law, MORGANROTH cannot establish a violation of Section 1962(b).

3. MORGANROTH Has No Evidence To Show A Violation Of RICO §1962(c).

MORGANROTH has alleged a violation of RICO §1962(c). (Complaint ¶58). MORGANROTH again alleges the violation in conclusory fashion parroting the statutory language with no indication as to how or when such violation occurred.

"A violation of Section 1962(c)... requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima at 496.

MORGANROTH has two immediate problems establishing this violation: there is no RICO enterprise, and there is no pattern of racketeering activity as previously established hereinabove. The absence of either of these essential elements alone causes MORGANROTH Section 1962(c) allegation to fail. But there is more.

As previously discussed hereinabove, MORGANROTH's RICO claim is also flawed because they cannot show the requisite "distinctness" between Defendants and the purported enterprise at any time after 1982. According to the allegations in MORGANROTH's own Complaint, after 1982, the only participants in the purported enterprise were DELOREAN, entities affiliated with DELOREAN, or persons affiliated with the DELOREAN entities. This absence of "distinctness" between the Defendants and the enterprise is fatal to MORGANROTH's claim of a violation of RICO §1962(c).

In addition, the Supreme Court has recently addressed the "conduct" element of the Section 1962(c) violation in Reves v. Ernst & Young __ U.S.__, 113 S.Ct. 1163, 1166-1173 (1993). In Reves the Court held that:

> "...'to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs', §1962(c), one must participate in the operation or management of the enterprise itself."

Reves at 1173.

The absence of a RICO enterprise trips up MORGANROTH again and again. Under the Reves holding, it is obviously impossible to prove the operation or management of a non-existent enterprise. Even if the enterprise existed however, MORGANROTH has no evidence whatsoever to prove that DeLorean and/or ECCLESIASTES operated or managed such an enterprise. Indeed, it strains the imagination to conceive how one operates or manages an enterprise such as the one identified by MORGANROTH in his sworn interrogatories which has no discernable organization or structure. Because MORGANROTH has no evidence to show the existence of the RICO enterprise, the existence of the pattern of racketeering activity, or any evidence to show that DELOREAN or ECCLESIASTES operated or managed an enterprise, MORGANROTH's Section 1962(c) claim fails as a matter of law.

4. MORGANROTH Has No Evidence To Show A Violation Of RICO §1962(d).

MORGANROTH's Complaint alleges a violation of RICO §1962(d). (Complaint ¶59). As with all the rest, MORGANROTH pleads the violation by virtually quoting the statutory language without a clue as to how or when such conspiracy occurred.

Where a plaintiff cannot show a viable claim under Sections 1962(a), (b), or (c), any Section 1962(d) claim fails as a matter of law. DeLorean v. Cork Gully, supra at 946. Grider, supra at 1151. Edwards v. First National Bank, 872 F.2d 347,

352 (10th Cir. 1989). As already established hereinabove, MORGANROTH has no viable claim under Sections 1962(a), (b) or (c).

Further, a RICO conspiracy violating Section 1962(d) requires proof of three elements. First, plaintiff must show the existence of a RICO enterprise. Manax v. McNamara, 842 F.2d 808, 812 (1st Cir. 1988). United States v. Neapolitan, 791 F.2d 489, 499 (7th Cir.), cert. denied, 479 U.S. 939 (1986). As previously pointed out hereinabove, MORGANROTH has no evidence to show the existence of an enterprise. On this basis alone, MORGANROTH's Section 1962(d) claim fails.

The second essential element of a Section 1962(d) violation which MORGANROTH must prove is that DELOREAN or ECCLESIASTES agreed to participate in the affairs of the enterprise. U.S. v. Valera, 845 F.2d 923, 929 (11th Cir. 1988), cert. denied, 490 U.S. 1026 S.Ct. 1953 (1989). United States v. Cauble, 706 F.2d 1322, 1341 n.64 (5th Cir. 1983) cert. denied, 465 U.S. 1005 (1984). MORGANROTH has not alleged nor can he produce evidence to show that DELOREAN or ECCLESIASTES ever agreed to participate in the affairs of the nonexistent enterprise. MORGANROTH has deposed 12 witnesses and discovered tens of thousands of pages of documents in this action but has not one bit of evidence to establish any such agreement by DELOREAN or ECCLESIASTES.

The third essential element of a Section 1962(d) violation which MORGANROTH must, prove is that DELOREAN and ECCLESIASTES agreed to join the conspiracy with knowledge that others with knowledge of the conspiracy would violate RICO by committing two or more predicate acts. United States v. Joseph, 781 F.2d 549, 554 (6th Cir. 1986). MORGANROTH, has absolutely no evidence of any such agreement by

DELOREAN or ECCLESIASTES. MORGANROTH has no evidence to establish of any of the requisite elements of a Section 1962(d) violation.

E. MORGANROTH HAS NO EVIDENCE TO DEMONSTRATE ANY INJURY TO BUSINESS OR PROPERTY "BY REASON OF" A VIOLATION OF RICO §1962.

RICO §1964(c) states, in pertinent part, "Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore. . . ." [Emphasis added]. As the Supreme Court has stated, ". . the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation." Sedima at 496. Injury from the racketeering acts themselves is not sufficient. Grider, supra at 1149.

MORGANROTH alleges damages arising from a violation of RICO Section 1962(a). (Complaint ¶¶57, 62). Therefore, MORGANROTH must prove that they were injured by use or investment of racketeering income in an enterprise. DeLorean v. Cork Gully, supra, at 944. Craighead v. E.F. Hutton. Inc., 899 F.2d 485, 494 (6th Cir. 1990). In Re Tucker Freight Lines, 789 F.Supp. 884, 891-892 (W.D. Mich. 1991). MORGANROTH has absolutely no evidence to show injury from such use or investment.

As pointed out elsewhere in this brief, MORGANROTH cannot prove a violation of RICO Section 1962(a) because he has no proof of the existence of an enterprise, no proof of receipt of racketeering income by DELOREAN or ECCLESIASTES, and no evidence of any use or investment of racketeering income in an enterprise by DELOREAN or ECCLESIASTES. If there was

no violation of §1962(a), there can be no injury "by reason of" the non-existent violation.

MORGANROTH's allegations of injury "by reason of" violations of RICO Section 1962(b), (c) and (d) are equally specious and insupportable. To prove injury "by reason of" a violation of Section 1962(b), MORGANROTH must prove injury caused by acquisition or control of an enterprise by DELOREAN or ECCLESIASTES. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1411 (3d Cir. 1991). Danielson v. Burnside-Ott Aviation Training Center, 941 F.2d 1220, 1230-31 (D.C. Cir. 1991). DeLorean v. Cork Gully, supra at 945. In Re Tucker, supra at 891-892. Midwest Grinding Co., Inc. v. Spitz, 716 F.Supp. 1087, 1091 aff'd, (N.D. Ill. 1989), 976 F.2d 1016 (1992). MORGANROTH has no proof of any enterprise, no proof of any acquisition or control of an enterprise, and no proof of an injury "by reason of" an acquisition or control of an enterprise.

To prove injury "by reason of" a violation of Section 1962(c), MORGANROTH must prove injury caused by DELOREAN or ECCLESIASTES' operation or management of an enterprise through a pattern of racketeering activity. Reves, supra at 1172. MORGANROTH has no evidence of an enterprise, no evidence of a pattern of racketeering activity, no evidence that DELOREAN or ECCLESIASTES operated or managed an enterprise through racketeering activity, and no evidence of any injury "by reason of" such conduct.

Once it is clear that MORGANROTH has no evidence to show a violation of Section 1962(a), (b) or (c), nor any evidence showing injury "by reason of" such a violation, there cannot possibly be an injury based on violation of Section 1962(d). Where there is no showing of injury from the violations of Section 1962(a), (b) or (c), there is no showing that the

conspiracy to commit those violations has caused injury. Grider, supra at 1151.

Indeed, analysis of the injury alleged in the Complaint reveals MORGANROTH's RICO claim for the sham that it is. Behind MORGANROTH's meritless Count I RICO claim lurk ten other Counts which reveal the true dispute between the parties: MORGANROTH claims DELOREAN and ECCLESIASTES owe some $4 million in legal fees, while DELOREAN and ECCLESIASTES contend that they owe nothing or a much reduced amount as a result of MORGANROTH's own negligence, breach of fiduciary duty, fraud, excessive and unnecessary charges and breach of contract. This is the real dispute between the parties, which has nothing to do with MORGANROTH's trumped-up RICO claim.

Tellingly, Complaint ¶43 begins: "The fraudulent, unlawful, and wrongful schemes to defraud Plaintiffs and third parties, include, but are not limited to, the following...." [Emphasis added.] Complaint ¶¶43A-J then allege ten different "schemes" by Defendants, including the MORGANROTH Scheme alleged in ¶43J. The damages claimed in the MORGANROTH Scheme are $4,400,000 in legal fees and expenses, which is obviously just a rounded-off version of the $4,358,689.26 which MORGANROTH claims as the amount owing from DELOREAN for legal fees and expenses in Counts 4, 6, 8, 10 and 12 of the Complaint.[19]

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[19]Counts 3, 5, 7, 9 and 11 of the Complaint, against LOGAN only, seek $1,408,689.26. The fact that the last five digits of the amount sought from LOGAN ($689.26) matches to the penny the last five digits of the amount sought from DELOREAN in Counts 4, 6, 8, 10 and 12 ($689.26) indicates that the amount sought

As the initial text of Complaint ¶43 quoted hereinabove admits, the other nine schemes alleged in Complaint ¶¶43A-I relate only to third parties, and have caused no injury whatsoever to the MORGANROTH Plaintiffs. There is no allegation and no evidence that MORGANROTH's business or property was injured "by reason of" any of these other schemes, much less by an actual violation of RICO §1962 as required by Section 1964(c).

MORGANROTH can bring forth no evidence of injury "by reason of" a violation of Section 1962 because there was no violation of Section 1962 and because in truth the only potentially valid claim MORGANROTH has against DELOREAN and ECCLESIASTES is the attorney fee claim which appears in Counts III through XII of the Complaint. MORGANROTH has suffered no injury by a violation of RICO and the entire RICO claim is a sham. This Honorable Court should order judgment against the sham RICO claim and allow the parties to go forward to litigate the relatively simple fee dispute between them.

IV. CONCLUSION

In this motion for summary judgment, Defendants DELOREAN and ECCLESIASTES have established that Plaintiffs MORGANROTH have no evidence to show the existence of the essential "RICO enterprise", no evidence to show the occurrence of the essential "pattern of racketeering activity",

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from LOGAN is incorporated into the amount sought from DELOREAN, and that therefore the amounts sought from DELOREAN and LOGAN together is $4,358,689.26 -- virtually identical to the $4,400,000 sought under the Morganroth Scheme alleged at Complaint ¶43J.

no evidence to show a violation of RICO §1962(a), (b), (c) or (d), and no evidence to show that they were injured in their business or property "by reason of" a violation of RICO §1962. In addition, Defendants have shown clearly that MORGANROTH's RICO claim is an egregious violation of his ethical duties toward DELOREAN and ECCLESIASTES and as such said RICO claim must be dismissed by this Honorable Court.

For all the foregoing reasons, and based on this brief and the affidavits and evidence filed in support hereof, and based on any further briefs to be submitted by Defendants and on any oral argument which this Honorable Court may decide to hear on this matter, Defendants DELOREAN and ECCLESIASTES respectfully request that this Court order the entry of judgment against the Count I RICO claim in Plaintiffs' Complaint.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORPORATION

BY /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Defendants' Motion For Separate Trial of Counts II Through XII of Plaintiffs' Complaint Prior to Trial of Count I (RICO) of Plaintiffs's Complaint

District Court Case №. 93-CV-70848
Filed December 22, 1993

Pages F-1 thru F-29

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich,**
Defendants.	)	**Detroit**

DEFENDANTS' MOTION FOR SEPARATE TRIAL OF COUNTS II THROUGH XII OF PLAINTIFFS' COMPLAINT PRIOR TO TRIAL OF COUNT I (RICO) OF PLAINTIFFS' COMPLAINT

1. Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. pursuant to Fed. R. Civ. P. Rule 42 (b), hereby move this Honorable Court for an order which orders that Counts II through XII of Plaintiffs' Complaint be tried separately from and prior to the trial of Count I of Plaintiffs' Complaint on the following grounds:

a. That Counts II through XII of Plaintiffs' Complaint seek approximately $4.4 million from Defendants for services allegedly rendered to Defendants by Plaintiffs for which Defendants allegedly have not paid;

b. That the only recoverable injury to Plaintiffs claimed in Plaintiffs I Count I RICO claim is the same non-payment of fees;

c. That Defendants contend that the reason for their non-payment of fees was not fraudulent whatsoever, but instead was based on Defendants' good faith belief that Plaintiffs had committed acts of negligence, and/or breach of fiduciary duty, during the course of Plaintiffs' representation of Defendants; and that said fees were not otherwise due and owing.

d. That the question whether Plaintiffs have suffered any injury for which they may be compensated pursuant to their Count I RICO claim depends on the jury determination in the fee claims which comprise Counts II through XII of Plaintiffs' Complaint, because if they jury finds that Defendants owe Plaintiffs no fees or less fees than Plaintiffs claim, then such a jury finding will establish that Plaintiffs either were not injured at all (upon a finding of no fees owing), or will establish that Defendants had a good faith reason and not a fraudulent reason for not paying Plaintiffs' fees (upon a finding of no fees owing or less fees owing than Plaintiffs' claim;

e. That separate trial of the fee claims in Counts II through XII prior to trial of the RICO claims in Count I will therefore be in furtherance of convenience to the jury, this Honorable Court, and the parties, will avoid prejudice to the jury arising from the "racketeering" RICO claim, and will be conducive to expedition and economy and keeping with the principles set forth in Fed.R.Civ.P. Rule 42(b).

2. In support of this motion, Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. rely upon

the brief in support of this notion, and the papers filed in support of defendants' motions for :Summary judgment.

3. On December 15, 1993, a conference between attorneys was held in which counsel for Defendants explained the nature of the motion and its legal basis to counsel for Plaintiffs. Defendants' counsel requested the Plaintiffs' counsel agree and stipulate that Counts II through XII of Plaintiffs' Complaint should be tried first and separately from Count I Plaintiffs' counsel, Plaintiffs' counsel said they would not so agree and stipulate. Therefore, Defendants bring the instant motion.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Stanley P. Fleshman
STANLEY P. FLESHMAN
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

NOTICE OF HEARING

TO: Mayer Morganroth, Esq.
MORGANROTH & MORGANROTH
2000 Town Center, Suite 2000
Southfield, MI 48075

PLEASE TAKE NOTICE that Defendants' Motion for Separate Trial of Counts III through XII of Plaintiffs' Complaint Prior to Counts I and II (RICO) of Plaintiffs' Complaint, brought pursuant to Fed.R.Civ.P. Rule 42(b), will be brought on for hearing before the Honorable Anna Diggs Taylor in her courtroom, on a date and time to be determined by this Honorable Court.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Stanley P. Fleshman
STANLEY P. FLESHMAN
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

PROOF OF SERVICE BY FEDERAL EXPRESS

I, MAXANNE A. THACKER, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 77 Cadillac Drive, Suite 240, Sacramento, California 95825, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice of Federal Express.

On December 18, 1993, the following documents:

DEFENDANTS' MOTION FOR SEPARATE TRIAL OF COUNTS II THROUGH XII OF PLAINTIFFS' COMPLAINT PRIOR TO TRIAL OF COUNT I (RICO) OF PLAINTIFFS' COMPLAINT;

were served by Federal Express in a sealed envelope, with postage fully prepaid, addressed to:

Mayer Morganroth, Esq.
Jeffrey Morganroth, Esq.
Morganroth & Morganroth
2000 Town Center, Suite 2000
Southfield, MI 48075

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 1993, in Sacramento, California.

/s/ Maxanne A. Thacker
MAXANNE A. THACKER

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BRIEF IN SUPPORT OF MOTION FOR SEPARATE TRIAL OF COUNTS II THROUGH XII OF PLAINTIFFS' COMPLAINT PRIOR TO TRIAL OF COUNT I (RICO) OF PLAINTIFFS' COMPLAINT

I. INTRODUCTION

The Defendants in this matter bring this motion pursuant to Rule 42 (b) and seek a separate trial hereunder on the Plaintiffs' claim for violation of the Racketeer Influence and Corrupt Organization Act (RICO). This motion is a companion motion to the simultaneously filed motion for summary judgment directed to Plaintiffs' RICO cause of action.[1] Although the summary judgment motion is wholly meritorious and demonstrates that there is, as a matter of law, no viable RICO claim, this Court has previously ordered that all motions be filed on or before December 20, 1993 and in an effort to comply with said order the motion is presented to the Court.

It is respectfully submitted that in furtherance of the convenience of the parties, convenience of the court for efficient administration of justice and to avoid prejudice to the Defendants, the RICO cause of action should be tried separately from and subsequent to any other alleged cause of action in Plaintiffs' Complaint.

---

[1]Defendants incorporate into this motion all of the papers, documents and exhibits submitted in support of defendants' motion for summary judgment.

II. THE DISPUTES IN THIS LITIGATION

The core dispute between the parties in this litigation is over attorney's fees. The Plaintiffs contend that the Defendants are obligated to them for attorney's fees and costs of approximately $4.4 million. The Defendants dispute such liability and dispute the quantum of any attorney's fees and/or costs owed to the Plaintiffs. This core dispute is restated and reworded in Counts 2 through 12 of Plaintiffs' Complaint. The consumption of time, complexity and potential prejudice of this dispute, however, pales in comparison with the claimed RICO violation alleged in Count I. For example, while it takes only 19 pages to allege 11 counts with regard to the attorney's fees, it takes Plaintiffs 24 pages to allege the supposed RICO violation. It is respectfully submitted that presentation of evidence on these claims and consumption of the Court and parties' time will be equally disproportionate between the alleged RICO violations and the core dispute of contested attorney's fees obligations.

The allegations of the RICO count include ten separate and distinct "schemes" which are alleged to constitute a "pattern of racketeering." While Plaintiffs allege a commencement of their relationship with Defendants in 1982, the alleged "DRLP Scheme" assertedly occurred in 1979 and clearly in no way involved the Plaintiffs herein. The supposed "DLCM Scheme", although not so pled, also occurred long before any relationship existed between the Plaintiffs and Defendants. Not only was the "DRLP Scheme" the subject of criminal litigation long since concluded to DELOREAN's favor, but by MORGANROTH's own pleading, DELOREAN was "released from any and all civil fraud liability" with regard to such alleged scheme by settlement

in 1990. Furthermore, even without presenting a defense, the criminal trial lasted approximately two and a half months.

The RICO cause of action also alleges a "Eureka Federal Savings and Loan Scheme" which allegedly occurred in 1982 (before the MORGANROTH/DELOREAN relationship). DELOREAN has previously been tried on criminal charges with regard to Eureka Savings and acquitted. Again, this trial lasted several months. Like the alleged DMCL scheme, this supposed "Eureka" scheme has been the subject of prior litigation which is long since resolved. Moreover, those litigations were extensive and involved voluminous testimony and exhibits.

MORGANROTH's RICO claim also asserts various "attorney schemes". Two of these alleged schemes, the "Weitzman Scheme" and the "Simon Scheme" involved prior litigation which ended in settlement, and which totally resolved any liability of DELOREAN or Logan Manufacturing to the parties involved therein. Thus, these matters, in addition to the DMC and DRLP matters have already been litigated between the parties thereto and fully and finally resolved. The alleged "Weinberg Scheme" is subject to other litigation in the State of New York which is presently pending. Neither the "McConnell Scheme" nor the "Kimmerly Scheme" form any basis for liability under the RICO statutes, but nonetheless require consumption of substantial time and efforts to litigate.

The alleged "Creditors Scheme" supposedly occurred in 1984. Like all of the other non "MORGANROTH Schemes" the Plaintiffs hereto were not a party to any such scheme, were not damaged by any such schemes, and cannot show any damage suffered by any such scheme or any causal nexus between such schemes and any alleged damage suffered herein. Nonetheless,

litigation of these resolved "Schemes" requires the consumption of an inordinate amount of the court's, the jury's and the parties' time and efforts.

The "schemes" alleged in the RICO cause of action range far afield of the core dispute between the parties. Moreover, to prevail on a RICO cause of action, the plaintiff must demonstrate a traceable injury stemming directly from the defendant's alleged use and investment of illegally obtained income. DeLorean v. Cork Gully, 118 B.R. 932, 945 (E.D.Mich. 1990). Here, there is no evidence of any "separate traceable injury" between any of the alleged schemes and the claimed damages sustained by MORGANROTH. The evidence with regard to these alleged schemes is independent and distinct from the issues of whether the Defendants owe attorneys fees and if so the quantum of such attorneys fees.

It is respectfully submitted that any damage sustained by the Plaintiff is for attorneys fees allegedly due and owing. By engrafting upon the claim for attorneys fees, the RICO cause of action, the Plaintiffs seek to infuse into this fee dispute matter wide-ranging, unrelated matters independent of and not probative of any issues between the parties with regard to the liability for attorneys fees. It is further respectfully submitted that there is in fact, no RICO cause of action, that said causes of action should be dismissed by summary judgment and that the Plaintiffs, as Defendants' former attorneys are ethically precluded from and disqualified from pursuing such an action. Further, the RICO cause of action is unnecessary and is merely an attempt by Defendants' former lawyers to profit from their representation of the Defendants far beyond any actual contractual relationship or

obligation and far beyond the quantum of fees which could possibly be due and owing to them.

Part of the attempted "profit" to be derived by the Plaintiffs from the RICO cause of action is to place before the jury evidence of these various alleged schemes which such evidence would otherwise be inadmissible pursuant to Federal Rules of Evidence, Rule 404 and/or 403. The purpose of such evidence is to prejudice the jury against the Defendants and confuse the jury with regard to what is truly at issue between the parties. For these various reasons, it is wholly proper and appropriate under Rule 42(b) to order a separate trial of the RICO claim to avoid undue consumption of time, to further the interests of judicial economy and to avoid unjust prejudice to the Defendants.

III. ARGUMENT

Rule 42 (b) provides: "The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition in economy, may order a separate trial on any claim...."

Application of Rule 42 is well-established in the Sixth Circuit when bifurcation of trial will not unfairly prejudice the plaintiff and is conducive to judicial economy. In Re Bendectin Litig., 857 F.2d 290 (6th Cir. 1988). Further, it is well-established that the conditions for separate trial set forth in Rule 42(b) are disjunctive such that the presence of any one condition is sufficient to sustain the order for a separate trial. Willemiin Houdstermaapschaarij BV v. Apollo ConRuter Inc., 707 F.Supp. 1429 (D.Del. 1989). Further, where attorney fee claims are involved, it is appropriate to sever other unrelated claims. Davis and Cox v. Sumna, 751 F. 2d 1507 (9th Cir. 1985).

With regard to alleged RICO claims, the courts have long recognized the phenomena of such claims. "The provision in RICO f or civil remedies, holding out its intoxicating prospect of treble damages, has led to one of the legal phenomena of our age: invocation of RICO in a flood of civil cases." Sybedon Corp. v. Mendell, 646 F.Supp. 937, 939 (S.D.N.Y. 1986). Similarly, in the instant case, there exists here a simple fee dispute between attorney and client. Intoxicated by the prospect of treble damages, Plaintiffs have engrafted upon that fee dispute a RICO cause of action having no relationship to it. While the RICO cause of action may be intoxicating, it is not related to the actual fee dispute and is highly prejudicial to the Defendants.

In the case of Boeck v. Logan 480 Dairy Farm, 606 F.Supp. 868, 872 (1985), the court indicated that it would entertain a motion to sever the RICO claims from the other claims asserted by the plaintiff. "Finally, this court, cognizant of the prejudicial problem that can occur in a jury trial where a RICO claim is at issue, will consider a motion to sever the RICO claim from the rest of plaintiff's remaining claims and have a trial on the RICO count after a trial on plaintiff's remaining claims." (Emphasis added.) 606 F.Supp. at 872. Similarly, the court here should require a severance of the RICO claim to be tried after the claims on the attorneys fees. It is highly prejudicial to the defendant to introduce into evidence various disputed disparate and unrelated matters occurring over many years and wholly unrelated to the Plaintiffs herein.

As set forth in the motion for summary judgment, it is respectfully submitted that the alleged "schemes" do not constitute a "pattern of racketeering activity" and that, in any event, there is no causal nexus between any such alleged

"schemes" and any damage sustained by the Plaintiffs herein. Should the court deny Defendants' motion for summary judgment and require trial of the RICO count, it is respectfully submitted that the evidence presented on such count would, as a matter of law, ultimately be insufficient to sustain a verdict in favor of Paintiffs. It is further respectfully submitted that upon presentation of all such evidence, the court, as a matter of law, would be obligated to dismiss Plaintiffs' RICO count. However, should such evidence be presented to the jury during the course of litigating the fee dispute, the prejudice to Defendants would be irreversible.

In the case of Duttle v. Bandler and Kass, 82 Civ. 5084 (HMW) (S.D.N.Y. 1990) reprinted in RICO Business Disputes Guide (CCH) ¶7535, the court ordered a separate trial under Rule 42(b) on the defendant's RICO claim. (Attached as Exhibit "A" hereto). In the Duttle matter, the defendants argued that the evidence of the RICO claims would unduly prejudice the defendants with regard to the underlying fraud claims and that separate trials were in the interest of judicial economy "given that the need for a RICO trial would be obviated in the event defendants prevail in the underlying securities fraud case." (CCH p.10, 632). The court granted the motion stating in part, "trying the claims together would prejudice defendants and may confuse the jury, furthermore, trying the RICO cause of action would be a waste of judicial resources should defendants prevail on the securities fraud claim." The same considerations apply here.

The vast majority of Plaintiffs' claims are contractual. The only "fraud" claim is pled in Count II as an asserted promise made to pay attorneys fees without intent to perform. (Complaint p.21, 38). It is well-recognized that broken promises are not

RICO predicate acts and are not sufficient to impose liability upon a party pursuant to the RICO statutes. Cork Gully, supra at p. 944. Further, notwithstanding Plaintiffs' attempt to plead otherwise, the damages sustained by Plaintiffs, if any, are unpaid attorneys fees and costs.

Should the jury conclude the defendants owe no attorneys' fees to the plaintiffs, there can be no RICO case. The authority cited herein demonstrates, there must be a traceable injury and a causal nexus between alleged RICO conduct and damage suffered "by reason" of the RICO violations. If there is no award for attorneys' fees, there can be no damages suffered by reason of RICO violations or traceable to any such conduct.

Should the jury conclude that defendants owe attorneys' fees premised solely upon the contract causes of action, there likewise can be no RICO case. Mere breaches of contract do not constitute RICO predicate acts and/or insufficient to impose liability under RICO.

Moreover, should the jury conclude that the defendants are liable under any of the pled attorneys' fee theories, for some but not all of the attorneys' fees and costs, there is likewise no RICO case. Defendant contest the amount of attorneys' fees to which plaintiffs are entitled under any of the attorneys' fees causes of action. Should the jury conclude that the plaintiffs are not entitled to the totality of fees they claim, such a verdict demonstrates existence of a good faith basis for non-payment of the attorneys' fees wholly and conduct inconsistent with fraudulent RICO schemes and/or predicate acts.

The only possible way that there is even an exposure for liability under the RICO cause of action is if the jury concludes that defendants are liable for all of the attorneys' fees and costs

claimed by the plaintiffs and that such liability is premised upon Count II of the Complaint alleging fraudulent misrepresentation.

The alleged "RICO schemes" and the supposed "predicate acts" supporting such schemes, are not admissible evidence with regard to the alleged fraud cause of action set forth in Count II. As mentioned above, the alleged fraud in Count II is the supposed promise to pay attorneys fees without an intent to perform such promise. (Complaint, pp. 23, 38). However, the "DRLP scheme" allegedly consists, not of false promises, but of "conversion" and creation of a false private placement memorandum (Complaint, p. 16); the "DMC scheme" alleges false representations with regard to contracts and diversion of funds, not false promises without intent to pay (Complaint, pp. 18-19); the "Creditors scheme" alleges false representations made to induce transfer of Logan Manufacturing Company, not false promises to pay (Complaint, p. 19); the alleged "Eureka Federal Savings and Loan scheme" alleged fraudulent conduct intended to "convert" monies, not false promises made without intent to perform. (Complaint, p. 18) Under the Federal Rules of Evidence, these various "schemes" are not admissible to support Plaintiffs' contended fraud cause of action alleging that Defendants made false promises to pay attorneys fees while possessing an intent not to perform. (Fed.R.Evid. 403,404.)

Moreover, the "attorneys schemes" do not constitute predicate acts under RICO and are not relevant or admissible with regard to the alleged fraud set forth in Count II. As demonstrated in the accompanying motion for summary judgment, the "Weitzman scheme" does not exist; there was no false promise made to Weitzman with regard to attorneys fees. It is further demonstrated in said motion that there was no false

promise made by Defendants to McConnell with regard to the payment of attorneys fees and McConnell himself testified that he instructed that his fees not be paid. With regard to the "Simon scheme", there was no false promise in said matter and in fact Plaintiffs represented Defendants in said matter asserting that no fees were owed in light of Simon's misfeasance.

Clearly, assertion of a defense to payment of attorneys fees premised upon wrongful or negligent conduct of the attorney is not in any way equivalent to or probative of a claimed false promise made without intent to perform. In fact, the same analysis applies to both the alleged "Weinberg scheme" and the alleged "Morganroth scheme" wherein the alleged fees due and owing were disputed on numerous bases including negligence on the part of the claimant attorneys. Lastly, there is simply no "Kimmerly scheme" as Kimmerly has not even sent DeLorean a bill for the alleged unpaid fees.

The holding and analysis in the Duttle case is particularly apposite here:

> Defendants argue that evidence of the RICO predicate acts should not be admitted pursuant to Rule 404(b) because these acts do not involve claims, as here, that defendants had knowledge of other fraudulent statements in connection with the sale of securities. They point out further that, even if relevant, evidence sought to be introduced pursuant to Rule 404(b) may be excluded as less prejudicial than probative pursuant to Rule 403....
>
> I agree with defendants that, given that only one of the predicate acts should be admitted pursuant to Fed.R.Evid. 404(b) on the underlying fraud case, it is appropriate under Fed.R.Civ.P. 42(b) to have separate trials on the

> RICO and securities fraud claims. Trying the claims together would prejudice defendants and may confuse the jury, furthermore, trying the RICO cause of action would be a waste of judicial resources should defendants prevail on the securities fraud claim. On the other hand, if plaintiffs prevail on the fraud case, the RICO claim can then be tried promptly, by the same jury, as defendants have pointed out. Duttle, surra at p. 10632, 10633.

This litigation is a fee dispute. It is not a RICO case. The RICO cause of action asserted by the Plaintiffs and the evidence sought to be admitted pursuant to that cause of action is wholly unrelated to the fee claims and highly prejudicial to the Defendants. It is no doubt for the intoxicating purposes of obtaining treble damages and to bring forth evidence that is otherwise highly prejudicial and inadmissible that Plaintiff even allege the RICO count. Furthermore, litigation of the RICO cause of action and the postulated "schemes" will consume substantial amounts of time and expose the Court, jury and parties to participate in a potentially wholly avoidable exercise of relitigating years of totally unrelated events.

It is respectfully submitted that the considerations for separate trial set forth in Rule 42(b) are particularly applicable to the present matter and compel severance of the alleged RICO cause of action from the core attorneys fees dispute. Such severance will serve the interest of justice, the convenience of the Court, and will avoid undue prejudice to the Defendants while imposing no prejudice upon the Plaintiffs.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Stanley P. Fleshman
STANLEY P. FLESHMAN
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

[¶7535] *Duttle v. Bandler and Kass et al.*,
82 Civ. 5084 (KMW)(S.D.N.Y.1990) July 25, 1990

Jury Trial--Severance--RICO and Securities Law Claims. --Separate trials of securities law and RICO claims were appropriate because evidence of only one RICO predicate act apart from the underlying securities fraud would be admissible on the securities claim, and trying the claims together could prejudice the defendants and confuse the jury. Trying the RICO cause of action would be a waste of judicial resources if the defendants prevailed on the securities fraud claim. If the plaintiffs prevailed on the securities fraud claim, the RICO claim could then be tried promptly by the same jury.

Bank reference ¶ 1650.

Opinion

Wood, D.J. *[in full text excerpt for omission as indicated by asterisks]*:

On April 16, 1990, this court denied defendant's motion for summary judgment and plaintiff's motion *in limine* to restrict the admissibility of evidence regarding settlements of other cases. The court now addresses plaintiff's remaining *in limine* motions as well as defendants' motion to sever securities law and common law fraud claims from a RICO claim and counterclaim-defendant's motion to dismiss. The motions are addressed separately below.

Background

This action, instituted in 1982, alleges fraud in the sale of securities in American corporations to West German investors. Defendant Bandler & Kass in a New York law firm, Sylvor and

Werner are two of its partners. On September 23, 1986, Judge Pierce N. Leval, in an exhaustive forty-two page opinion (thereinafter cited as "Leval Op.")[1] granted in part and denied in part defendant's first motion for summary judgment. In that opinion, Judge leval set forth in detail the fraudulent scheme that is alleged in this case; familiarity with that opinion is assumed, and only an abbreviated version of the background information provided by Judge Leval will be repeated here; *see also* Memorandum Opinion and Order (Wood, D.J.), April 16, 1990.

Plaintiffs allege that between June 1979 and May 1980 they were induced to purchase worthless shares in four American or purportedly American corporation: Teletrans, Space and Energy Conservation Corp. ("SECC"), International Basic Energy Corp. ("IBEC"), and European Energy Cor. ("EEC").[2] The major figure in the scheme was Earl Belle, a reputed "Boy Wonder" of Wall Street before an indictment for securities fraud caused him to seek refuge in South America. In 1964, upon his return, Belle pleaded guilty to charges of embezzlement, mail fraud, and violations of the securities laws. The theory of the case is that Belle and the defendants schemed together to sell the securities, owned by a corporation known as European Commercial Finance and Fiduciary Ltd. ("European"), through Intact, an entity formed in July 1979 by Peter Kneubel and AlfredBoehme, two West German citizens. European is a

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[1]The opinion is attached as Exhibit G to the Affidavit of Neal Schwarfeld dated July 10, 1989.

[2]Although IBEC and EEC were represented to be American corporations, they apparently were never incorporated in the Unites States or elsewhere.

Cayman Island financial institution allegedly owned and controlled by Belle. Plaintiffs contend that Boehme and Knuebel were essentially innocent dupes induced by Bell to transmit his fraudulent messages to the plaintiff investors. Bandler & Kass, through its partners Sylvor and Werner acted as SEC counsel for Teletrans and its affiliates for the period from July 1978 to June 1980 during which Belle defrauded the plaintiffs. Leval Op. at 2-5.

Defendants allege that Intact[3] "knowingly and intentionally conveyed any and all misrepresentations and/or omissions to plaintiffs as part of Intact's and Belle's scheme to defraud.: Answer and Counterclaim of Sylvor and Bandler & Krass at ¶¶ 7, 11, 13, 17, 19, 23, 25 and 32. Defendants claim that:

> All of the securities referred to in the complaint were sold to plaintiffs by Intact based solely upon information provided to such persons by Intact.
>
> In selling such securities, Intact and its sales personnel made any and all of the allegedly false and misleading statements set forth in the complaint herein. Intact knew that the statements being made by its sales personnel concerning the securities at issue were false and misleading. In the alternative, even if Intact did not have direct knowledge that the statements being made by it were false and misleading, it failed to make any effort to verify the accuracy of any information provided to the customers, in reckless disregard of its obligation to be truthful to its customers.

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[3]Intact was a plaintiff in this action until the filing of the third amended complaint.

All of such facts were known to Intact and its counsel from the outset of this litigation.

By virtue of the foregoing, if defendants are found liable to any extent, to any of the plaintiffs herein on account of sales made to them by Intact, it is solely by virtue of the wrongful conduct of their own.

Id. at ¶¶ 46-49. Answer and Counterclaim of Werner[4] at ¶¶ 31-34. Defendants claim that they are entitled to contribution and/or indemnification from Intact. *See* Answer and Counterclaim of Sylvor and Bandler & Kass at ¶ 50 and Answer and Counterclaim of Werner at ¶ 35.

* * * (Non-RICO issues omitted.--CCH) * * *

Defendant's Motion to Sever

Defendants[13] move, pursuant to Fed. R.Civ. P. 42(b), or a separate trial of the RICO claim in this case, arguing that evidence of the RICO violations would unduly prejudice defendants with respect to the underlying fraud claims by labelling them "racketeers." They also argue that separate trials would be in the interest of the judicial economy, given that the need for a RICO trial would be obviated in the event defendants prevail in the underlying securities fraud case. Defendants argue that no prejudice would inure to plaintiffs by virtue of separate trials, in that any trial on the RICO claim could be held immediately after any verdict for plaintiffs on the underlying

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[4]The court notes that Werner is appearing *pro se.*

[13]The court notes that defendant Werner, joined by way of handwritten notice, Bandler & Kass and Sylvor's motion to sever.

fraud claims. Defendants point out that the RICO claim and the underlying fraud claims are factually distinct.

Rule 42(b) provides that: "The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conductive to expedition and economy, may order a separate trail of any claim..." As one court has stated, severance of claims is appropriate "where the claims to be detached present questions of fact and law distinct from the main action such that a single trial would lend to confusion, delay, additional expense, or undue prejudice.: *Totaliape, Inc. v. National Ass'n of State Bds. of Accountancy*, No. 85-4241 (S.D.N.Y. March 4, 1987) (1987 U.S. Dist. LEXIS 1544).

Plaintiffs argue that separate trials would be a waste of time in that they intend to offer evidence of RICO predicates acts in connection with the underlying fraud case anyway, as evidence of defendants' knowledge of Belle's Wrongdoing pursuant to Fed. R. Evid. 404(b).[14] In abetting securities fraud cause of action, plaintiff must prove "(1) a securities law violation by a primary wrongdoer, (2) *knowledge of the violation by the person sought to be charged*, and (3) proof that the person sought to be charged substantially assisted in the primary wrongdoing." *Armstrong v. McAlpin* 699 F.2d 79, 91 (2d Cir. 1983)(emphasis

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[14]Rule 404(b) provides that:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, *knowledge*, identity, or absence of mistake or accident. (Emphasis added).

added). *See also* Leval Op. at 22 (finding summary judgment for defendants inappropriate; plaintiffs had made an adequate showing of scienter because "Plaintiff's submissions present evidence from which an inference can be drawn that the defendants had knowledge of Bell's fraudulent activities and intended that they continue.")

Defendants argue that evidence of the RICO predicate acts should not be admitted pursuant to Rule 404(b) because those acts do not involve claims as here, that defendants had knowledge of others' fraudulent statements in connection with the sales of securities. They point out further that, even if relevant, evidence sough to be introduced pursuant to Rule 404(b) may be excluded as less prejudicial than probative pursuant to Rule 403. *See United States v. Foskey*, 636 F.2d 517, 523-526 (D.C. Cir. 1980).

Based upon the parties submissions, the court finds that under a Fed.R.Evid. 403 and 404(b) analysis, only one of the other four RICO predicate acts would be properly admissible on the underlying securities fraud claim. With respect to the sol-called "baskets of money" scam, *see* Plaintiffs' Mem. at p. 4 and Joint Pretrial Order at pp. 21-22, plaintiffs claim that Sylvor, with knowledge of Belle's conviction for securities fraud participated with Belle in a fraud scheme by reviewing and approving documents which Sylvor know to be fraudulent. Pursuant to Rule 404(b), this evidence would be admissible for purposes of showing that Sylvor had knowledge of Belle's fraudulent misrepresentations in this case and was not unaware of those misrepresentations as defendants claim. However, evidence of the remaining predicate acts, *i.e.* that Sylvor and Werner induced an acquaintance of Werner and Werner induced

an acquaintance of Werner to make investments based on false representations; that Sylvor and Werner spirited away partnership assets; and that defendants engaged in money laundering. *See* Plaintiffs' Mem. at 4.5, are of minimal probative value for purposes of showing that defendants had *knowledge of Earl Belle's* fraudulent misrepresentations in this case.[15] To the extent that the predicate acts have any probative value pursuant to Fed.R. Evid. 404(b), I find, pursuant to Rule 403, that the

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[15]Although plaintiffs also argue that the evidence should come under 404(b) for purposes of showing that defendants had the requisite knowledge and intent necessary for a punitive damages award on plaintiff's common law fraud claim, I find, again, that because the key questions with respect to knowledge in this case is whether defendant knew about *Belle's* misrepresentations, evidence of bad acts not involving Belle are either not probative or are, at best, more prejudicial than probative. Nor do I find persuasive plaintiffs' arguments that all of the precipe acts were part of a common plan or scheme. The securities fraud in this case involved misrepresentations made by Belle that defendants were allegedly aware of and aided and abetted. That type of fraud is substantially different from the other predicate acts alleged. The court notes that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." Fed.R. Evid. 404(b). To the extent that the other predicate acts are not useful in illuminating defendants' *knowledge* in this case, and are not admissible for any other specific purpose, they are inadmissible pursuant to Rules 403 and 404(b).

probative value is substantially outweighed by the prejudicial effects of that evidence.

I agree with defendants that, given that only one of the predicate acts should be admitted pursuant to Fed. R. Evid. 404(b) on the underlying fraud case, it is appropriate under Fed. R.Civ.P. 42(b) to have separate trials on the RICO and securities fraud claims. Trying the claims together would prejudice defendants and may confuse the jury; furthermore, trying the RICO cause of action would be a waste of judicial resources should defendants prevail on the securities fraud claim. On the other hand, if plaintiffs prevail on the fraud case, the RICO claim can then be tried promptly, by the same jury, as defendants have pointed out. Defendants' motion for a separate trial of the RICO claim is granted.

Conclusion

Counterclaim-defendant's motion to dismiss is granted; defendants' motion for a separate trial of the RICO claim is granted; plaintiffs *in limine* motions are granted in part and denied in part. The court having disposed of all pretrial matters[16] this case is deemed trial-ready. Counsel are directed to appear for a final pretrial conference before me at 4:00 o.m. on Monday, August 6. Should Arizona counsel wish to appear by telephone, he may call my courtroom deputy, Paul Robilotti, to make those arrangements. Counsel should submit any amendments they wish to make to the pretrial order in light of

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[16]The court notes that it has pending objections by defendant Werner to Magistrate Francis's entry of a preliminary injunction. The propondency of those objections does not effect this case's ready-trial status.

this opinion and order by three business days prior to the conference.

SO ORDERED.

PROOF OF SERVICE BY FEDERAL EXPRESS

I, MAXANNE A. THACKER, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 77 Cadillac Drive, Suite 240, Sacramento, California 95825, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice of Federal Express.

On December 18, 1993, the following documents:

BRIEF IN SUPPORT OF MOTION FOR SEPARATE TRIAL OF COUNTS II THROUGH XII OF PLAINTIFFS' COMPLAINT PRIOR TO TRIAL OF COUNT I (RICO) OF PLAINTIFFS' COMPLAINT;

were served by Federal Express in a sealed envelope, with postage fully prepaid, addressed to:

Mayer Morganroth, Esq.
Jeffrey Morganroth, Esq.
Morganroth & Morganroth
2000 Town Center, Suite 2000
Southfield, MI 48075

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 1993, in Sacramento, California.

/s/ Maxanne A. Thacker
MAXANNE A. THACKER

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Defendants' Motion For Judgment on The Pleadings Against Count I (RICO) of Plaintiffs' Complaint,

District Court Case Nº. 93-CV-70848
Filed December 22, 1993

Pages G-1 thru G-26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT I (RICO) OF PLAINTIFFS COMPLAINT

1. Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. pursuant to Fed. R. Civ. P. Rule 12 (c), hereby move this Honorable Court for an order granting judgment against Count I (RICO) of Plaintiffs' Complaint on the following grounds:

a. That Plaintiffs' Complaint, 119-12 reveal that Plaintiffs represented Defendants as legal counsel for over 10 years, during which time Plaintiffs provided "extensive" legal services to Defendants "in connection with in excess of 30

separate cases" and a "multitude of business, financial, and real estate matters" (Complaint ¶¶ 11, 12).

b. That Plaintiffs' Complaint ¶¶ 9-12 and 43A-J reveal that Plaintiffs represented Defendants as Defendants' attorneys during the same period of time during which events alleged as the RICO "schemes" were allegedly occurring;

c. That Plaintiffs' Complaint establishes beyond doubt that during Plaintiffs' former representation of Defendants, Plaintiffs might have acquired information which is substantially related to Plaintiffs' RICO claim in the above-captioned action;

d. That Plaintiffs' RICO claim exploits the confidences and secrets and information of the former client Defendants in violation of the Michigan Rules of Professional Conduct which govern attorney practice in this Honorable Court, and therefore as a matter of law and public policy and to enforce the ethical rules, judgment must be rendered against Plaintiffs' RICO claim.

2. In support of this motion, Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. rely upon the brief in support of this motion and the pleadings only.

3. On December 15, 1993, a conference between attorneys was held in which counsel for Defendants explained the nature of the motion and its legal basis to counsel for Plaintiffs. Defendants, counsel requested that Plaintiffs' counsel dismiss Count I (RICO) from Plaintiffs' Complaint, but Plaintiffs' counsel said they would not do so. Therefore, Defendants bring the instant motion.

DATED: December 17th, 1993

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

NOTICE OF HEARING

TO: Mayer Morganroth, Esq.
MORGANROTH & MORGANROTH
2000 Town Center, Suite 2000
Southfield, MI 48075

PLEASE TAKE NOTICE that Defendants' Motion for Judgment on the Pleadings Against Count I (RICO) of Plaintiffs' Complaint, pursuant to Fed. R. Civ. P. Rule 12 (c) , will be brought on for hearing before the Honorable Anna Diggs Taylor in her courtroom, on a date and time to be determined by this Honorable Court.

DATED: December 17, 1993

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

PROOF OF SERVICE BY FEDERAL EXPRESS

I, MAXANNE A. THACKER, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 77 Cadillac Drive, Suite 240, Sacramento, California 95825, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice of Federal Express.

On December 18, 1993, the following documents:

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT I (RICO) OF PLAINTIFFS' COMPLAINT;

were served by Federal Express in a sealed envelope, with postage fully prepaid, addressed to:

Mayer Morganroth, Esq.
Jeffrey Morganroth, Esq.
Morganroth & Morganroth
2000 Town Center, Suite 2000
Southfield, MI 48075

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 1993, in Sacramento, California.

/s/ Maxanne A. Thacker
MAXANNE A. THACKER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 22, 1993**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR JUDGMENT ON THE PLEADINGS
AGAINST COUNT I (RICO)
OF PLAINTIFFS' COMPLAINT

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STATEMENT OF ISSUES

1. Are Plaintiffs barred from pursuing their RICO claim as a matter of law because to do so is to exploit client confidences and overreach for fees and act as attorney - turned - litigant in an action against former clients other than an action strictly for fees, all of which is in violation of the Michigan Rules of Professional Conduct and other ethical principles and therefore Plaintiffs are barred from pursuing their RICO claim as a matter of law?

I. INTRODUCTION

The MORGANROTH Plaintiffs have a history of burdening this Honorable Court with specious and insupportable RICO claims. DeLorean v. Cork Gully, 118 B.R. 932 (E.D. Mich. 1990). Fortunately, this Honorable Court has a history of recognizing and disposing of such meritless claims before the burden becomes insufferable for court and parties alike. Id., at 939-946. Defendants I instant motion seeks to dispose of yet another meritless MORGANROTH RICO claim before it imposes on the Court and parties further unnecessary and unjustifiable burden, wasted time and expense.

This motion for judgment on the pleadings focuses upon, attacks and seeks judgment against the Count I RICO claim in Plaintiffs, Complaint. It is respectfully submitted that as a matter of law and as a matter of fact, Count I of Plaintiffs' Complaint cannot survive the rigors of analysis pursuant to Fed.R.Civ.P. Rule 12(c) and must therefore be dismissed.

The premise of this motion is simple. Defendants contend that MORGANROTH's own complaint shows that the RICO claim is barred as a matter of law. MORGANROTH's own complaint alleges that MORGANROTH represented defendants as legal counsel for over ten years during which time MORGANROTH provided "extensive" legal services to defendants "in connection with in excess of 30 separate cases" and a "Multitude of business, financial, and real estate matters". (Complaint, ¶¶ 11, 12). MORGANROTH's complaint also shows that MORGANROTH represented Defendants as Defendants' attorneys from 1982 to 1993, the same period of time during which the events alleged as the RICO "schemes"

were allegedly occurring. (Complaint ¶¶ 11, 12). MORGANROTH's complaint also shows that MORGANROTH represented defendants as defendants' attorneys in 1982 to 1993, the same period of time during which the events alleged as the RICO "schemes" were allegedly occurring. (Complaint ¶¶ 9 - 12 and 43A, J). MORGANROTH's own complaint also establishes beyond any doubt that during MORGANROTH's former representation of defendants, MORGANROTH might have acquired information which is substantially related to MORGANROTH's RICO claim in the instant action. MORGANROTH's own complaint therefore establishes that MORGANROTH is attempting to exploit for their own benefit the confidences and secrets and information gathered during their former representation of Defendants. Such exploitation and misuse of former client information is in flagrant violation of the Michigan Rules of Professional Conduct which govern attorney practice in this Honorable Court, and therefore as a matter of law judgment must be rendered against MORGANROTH's RICO claim.

II. FACTS

When considering a motion for judgment on the pleadings, the court accepts the well-pled factual allegations of the complaint as true. *Paskvan v. City of Cleveland, Civil Service Commission*, 946 F.2d 1233, 1235 (6th Cir. 1991). *Sage Intern., Ltd. v. Cadillac Gage Co.*, 556 Fed. Supp. 381, 383 (E.D. Mich. 1982).

Plaintiffs MAYER MORGANROTH and MORGANROTH & MORGANROTH (hereinabove and hereafter collectively "MORGANROTH") allege in their Complaint that they provided legal services to Defendants JOHN Z.

DELOREAN (hereinabove and hereafter "DELOREAN") and ECCLESIASTES 9:10-11-12, INC. (formerly Logan Manufacturing Company, hereinabove and hereinafter "ECCLESIASTES") for more than ten years, from 1982 to 1993. (MORGANROTH Complaint, ¶9). During those years, MORGANROTH represented DELOREAN and Logan Manufacturing Company (hereinafter "LOGAN") in many and various matters, in which MORGANROTH provided "extensive" legal services to DELOREAN and LOGAN " in connection with in excess of 30 separate cases" and a "multitude of business, financial, and real estate matters." (MORGANROTH Complaint, ¶¶ 9-15). MORGANROTH's complaint alleges that MORGANROTH represented defendants from 1982 - 1993, the same period of time during which the events alleged as the RICO "schemes" were allegedly occurring. (MORGANROTH Complaint, ¶¶ 9-12 and 43A-J).

The allegations of MORGANROTH's complaint establish beyond doubt that during MORGANROTH's former representation of DELOREAN and LOGAN, MORGANROTH might have acquired information which is substantially related to MORGANROTH's RICO claim in the instant action. (MORGANROTH Complaint, ¶¶9-15 and 43A-J).

Thus, MORGANROTH gathered confidences, secrets and information from former clients DELOREAN and LOGAN over a ten-year period. MORGANROTH's instant RICO claim attempts to use those very confidences, secrets, and information against DELOREAN and ECCLESIASTES, in violation of ethical rules and rules of professional responsibility. Such conduct requires the dismissal of MORGANROTH's RICO claim as a matter of law, as further explained hereinbelow.

III. ARGUMENT

A. MORGANROTH'S RICO CLAIM AGAINST FORMER CLIENTS DELOREAN AND ECCLESIASTES IS BARRED AS A MATTER OF LAW AND PUBIC POLICY AS A FLAGRANT MISUSE OF CLIENT CONFIDENCES IN VIOLATION OF PROFESSIONAL ETHICS AND RULES OF PROFESSIONAL RESPONSIBILITY.

There is no question that an attorney's legal action against former clients must be dismissed if maintenance of such action violates the attorney's ethical obligations to the former clients. *Cannon v. U.S. Acoustics Corp.*, 398 F.Supp. 209, 228 (N.D.Ill. 1975), rev'd in part, 532 F.2d 1118, 1120 (7th Cir. 1976). *Richardson v. Hamilton Int'l Corp.*, 469 F.2d 1382, 1384-86 (3d.Cir. 1972). MORGANROTH's RICO claim violates ethical obligations to DELOREAN and ECCLESIASTES and must be dismissed.

MORGANROTH's RICO claim is an outrageous affront to and violation of the Michigan Rules of Professional Conduct and other well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients, and which prohibit an attorney from exploiting such confidences and secrets for his own benefit or advantage.[1]

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[1]See, for example, Michigan Rules of Professional Conduct (hereinafter MRPC) 1.6 and 1.9. ABA Model Code of Professional Responsibility (hereinafter ABA Code), Canon 4, Canon 9, Disciplinary Rule 4-101. ABA Model Rules of Professional Conduct, (hereinafter ABA Rules), Rule 1.6.

In an act of legal treachery, MORGANROTH exploits the information and confidences he gathered during ten years as Defendants' attorney to manufacture the fictions and half-truths which make up the RICO allegations, then adds an audacious $30 million damage claim which is nothing more than a shameless and transparent attempt to shake down Defendants and extort a settlement. Such conduct is unconscionable. An attorney's ethical duties must be strictly enforced to protect and encourage the client's free and open disclosure to the attorney, lest the client "justifiably fear that information he reveals to his lawyer on one day may be used against him on the next." *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 570-571 (2nd Cir. 1973). Cannon 1, 398 F.Supp. 209, 221, 224.

This Honorable Court has a duty to supervise the conduct of its members, to maintain public trust and confidence in the legal profession, and to act when an attorney's actions carry even the appearance of impropriety. *Richardson v. Hamilton Int'l Corp*, F.2d 1382, 1385-86 (3d Cir. 1972). Because attorneys have been granted significant privileges in our society, they must adhere scrupulously to a standard of proper dealing. *General Elec. Co v. Valeron Corp.*, 428 F.Supp. 68, 74 (E.D.Mich. 1977).

This Honorable Court must not allow predatory practices by attorneys against former clients. Sending this RICO claim forward would declare open season on clients and open the door to any overreaching attorneys who would use the threat of RICO treble damages to extort excessive fees from their clients, just as MORGANROTH is attempting to do to DELOREAN and ECCLESIASTES in this action.

As attorneys practicing in this Honorable Court, MORGANROTH must comply with the Michigan Rules of

Professional Conduct. Eastern District of Michigan, Local Rule 111.1(d)(2). MRPC 1.6 states, in pertinent part:

> "(b) Except when permitted under paragraph (c), a lawyer shall not knowingly: (1) reveal a confidence or secret of a client; (2) use a confidence or secret of a client to the disadvantage of the client; or (3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.
>
> (c) A lawyer may reveal: ... (5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct."

The attorney's strict duty to protect client information continues even after termination of the attorney-client relationship. MRPC 1.9.

The protection in MRPC 1.6 is broader than the attorney/client privilege. As defined in MRPC 1.6 (a) a "confidence" is information protected by the attorney/client privilege, while a "secret" is "other information gained in the professional relationship . . . the disclosure of which would be embarrassing or would be likely to be detrimental to the client." Thus the attorney is prohibited from using against the client or former client both privileged information and other information learned as a result of the representation. This prohibition against disclosure exists even if the information is part of a public record, is available from other sources, or comes to the attorney from other sources. *General Elec. Co., supra* at 74. *Emle Industries, supra* at 572-573. H. Drinker, Legal Ethics,135 (1953).

One exception to the rules against disclosure appears in MRPC 1.6(c)(5) quoted above. However, as that rule states clearly, the attorney may reveal only the information "necessary" to support the fee claim or to defend claims of wrongdoing. MORGANROTH's RICO allegations reveal client information far beyond that "necessary" to establish the fee claim or defense Defendants' claims of wrongdoing.

Under the well-established "necessity" standard, that MORGANROTH may only disclose information necessary to protect his own rights and should not disclose more than is necessary for his own protection. *Mitchell v. Bromberger*, 2 Nev. 345, 349 (1866). 2 F. Mechem, A Treatise on the Law of Agency, Section 2313 (2d Ed.1914). 5 B. Jones, Commentaries on Evidence, Section 2165 (2d Ed. 1926). ABA Opinions of the, Comm. on Professional Ethics, No. 19 (1930), No. 250 (1943) (attorney should "carefully avoid any disclosure not clearly necessary to obtaining or defending his rights"). *First Federal Sav. & Loan v. Oppenheim, Appel, Dickson*, 110 F.R.D. 557, 567 (S.D.N.Y. 1986). *In Re Nat. Mortg. Equity Corp. Mortg. Pool Cert.*, 120 F.R.D. 687, 692 (C.D.Cal. 1988).

Nor may MORGANROTH unilaterally decide what is "necessary" to protect their rights. A lawsuit between attorney and client:

> ... does not entitle the attorney to rummage thorough every file he has on that particular client (regardless of its relatedness to the subject matter of the present case) and to publicize any confidential communication he comes across which may tend to impeach his former client. At the very least, the word 'necessary' in the disciplinary rule requires that the probative value of the

> disclosed material be great enough to outweigh the potential damage the disclosure will cause to the client and to the legal profession.

[Footnotes omitted]. *Levin v. Ripple Twist Mills, Inc.*, 416 F.Supp. 876, 886-887 (E.D. Pa. 1976).

The determination of what is "necessary" for an attorney's defense against claims by the former client depends on the claim's content. *Heartbreak Cabaret v. Cruz & Toledo Restaurant*, 699 F.Supp. 1066, 1071 (S.D.N.Y. 1988).

MORGANROTH's RICO claim is not "necessary to establish or collect a fee". MRPC 1.6 (c) (5). In fact, MORGANROTH has pled 10 other counts in the Complaint to establish and collect the disputed fee. The only way the reckless RICO allegations could help MORGANROTH collect a fee is by aiding the extortion of a settlement from DELOREAN and ECCLESIASTES in avoidance of further MORGANROTH mudslinging, or by prejudicing a judge and jury with classic inadmissible "bad man" evidence[2]. so that dislike of DELOREAN and ECCLESIASTES would translate into a judgment in favor of MORGANROTH[3].

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[2]Federal Rules of Evidence, Rules 404, 403.

[3]Any such "fee" settlement or judgment in excess of fees actually owed would be clearly excessive and therefore violate MRPC 1.5 which prohibits excessive fees to attorneys. In fact, MORGANROTH's $30 million RICO claim and the $10 million fraud/punitive damages claim in Complaint Count II can both be viewed as unconscionable fee-gouging in violation of MRPC 1.5 which is another ground for dismissing those two claims as a

Nor is MORGANROTH's RICO claim "necessary" to "defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct." MRPC 1.6(c)(5). Defendants' Amended Answer alleges that many of the services provided by MORGANROTH were negligently performed, unnecessary, unauthorized, or necessitated by and/or directly caused by MORGANROTH's negligence, breach of fiduciary duty, fraud or breach of contract. (See Amended Answer at ¶¶ 8-12, 14, 21, 37, 40, 49, 51, 57, 60, 63, 64, 66, 67, 71, 76).

But MORGANROTH's proper defense against the allegations in the Amended Answer is to prove that there was no wrongdoing by MORGANROTH regarding the legal services provided, not to prove a RICO claim against Defendants. Again, the only "defense" afforded by the meritless RICO claim is to coerce Defendants into a settlement or to prejudice the court and the jury into ignoring Defendants' claims. These cannot be the "necessary" disclosures contemplated by the ethical rules.

In sum, MORGANROTH's RICO claim is not "necessary" to collection of the fee or to defend against Defendants' claims of impropriety. The exception in MRPC 1. 6(c)(5) does not apply. Therefore, MORGANROTH has exploited the confidences and information of his former clients for his own benefit and to their detriment in violation of MRPC 1.6. Such violation of the ethical rules is grounds for judgment against the RICO claim as a matter of law. *Cannon v. U.S. Acoustics Corp.*, 398 F.Supp. 209, 228 (N.D.Ill. 1975), rev'd in part, 532 F.2d 1118, 1120 (7th Cir. 1976). *Richardson v. Hamilton Int'l Corp.*, 469 F.2d 1382, 1384-86 (3d.Cir. 1972).

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matter of law.

In Cannon I, 398 F.Supp. 209, attorney Charles B. Cannon and three other individual plaintiffs brought a six-count complaint against two corporations. Attorney Cannon and the other plaintiffs were shareholders in the defendant corporations, and the six counts in the complaint included derivative shareholder claims as well as personal claims. Attorney Cannon had previously represented the corporate defendants for 12 years in a "multitude" of legal matters. Id. at 227-228. Defendants moved to disqualify Cannon as a party plaintiff based on his prior professional representation of defendants in legal matters substantially related to the action by Cannon and the other plaintiffs against the defendant corporations. The Cannon I Court agreed with defendants and disqualified attorney Cannon as a party plaintiff. Id. at 228.

The Cannon I Court relied on ABA Code, Canon 4, which states, "A Lawyer Should Preserve the Confidences and Secrets of a Client", and also on Ethical Considerations (EC) 4-4 and 4-5, which follow Canon 4. These provisions of the ABA Code set forth the same client protections and prohibitions against attorney disclosure as MRPC 1.6 and 1.9. For example, EC 4-5, states in pertinent part:

> A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the...

The Cannon I Court found that attorney Cannon's legal action against his former clients violated his ethical duty not to use the client's own information against them, because the matters and issues in Cannon's pending action were substantially related to the matters or course of action in Cannon's prior

representation of the clients, and because Cannon might have acquired information during the prior representation which was related to the subject matter of his pending action. Cannon I at 223, 228, citing *T.C. Theater Corp. v. Warner Bros. Pictures*, 113 F.Supp. 265 (S.D.N.Y. 1953). See also *Emle Industries, supra* at 571.

The party moving for disqualification need not prove that confidences or secrets were disclosed to the attorney. Disclosure is assumed once a substantial attorney - client relationship is established. Cannon I at 223. *Emle Industries* at 571.

The Cannon I Court reviewed the evidence before it which showed that attorney Cannon had represented the defendant corporations for 12 years, had performed a "multitude of legal matters" for them during that time, and that his representation was during the same time period in which the wrongs against the corporations which were the basis of his claims allegedly occurred. Based on that evidence, the court concluded that Cannon might have acquired information in the course of the former representation which was substantially related to the pending suit. On that basis, the court determined that Cannon's pursuit of his legal action against his former clients violated his ethical duties as an attorney, and disqualified Cannon as a party plaintiff. Cannon I at 227-229.

In Cannon II, 532 F.2d 1118, the Seventh Circuit affirmed the judgment in Cannon I in all respects except as to Count VI, attorney Cannon's claim for recovery of unpaid legal fees for services provided to defendant corporations during the period of his representation. The net result of Cannon II therefore was a finding that attorney Cannon was appropriately disqualified from acting as a party plaintiff as to those counts of

his complaint which threatened ethical violations, but he was allowed to go forward as to his fee claim.

Cannon I and II are directly on point with the instant case.

In Cannon, the disqualified attorney represented the defendants for 12 years during which time he performed services in a "multitude of legal matters" on their behalf. In this case, MORGANROTH alleges that he represented DELOREAN and LOGAN for over ten years and that said representation was "extensive", encompassed "in excess of 30 separate cases", and was rendered "in connection with a multitude of business, financial, and real estate matters". (MORGANROTH Complaint, ¶¶9-12).

In Cannon, attorney Cannon's representation of defendants covered the same period as the events alleged in Cannon's complaint. In this case, MORGANROTH alleges representation of DELOREAN and LOGAN from 1982 through 1993, a period which encompasses at least seven of the ten "schemes" alleged in MORGANROTH's RICO claim. (MORGANROTH Complaint, ¶43D-J).

In Cannon, the court disqualified attorney Cannon as a party plaintiff as to all claims except his claim for unpaid legal fees because it was clear that in the course of his former representation of defendants he might have acquired information substantially related to his pending suit. In Cannon, there was no claim that Cannon had actually used the client's information against them. The mere possibility that he might do so warranted disqualification.

In this case, this Court must disqualify MORGANROTH as a party plaintiff as to all claims except those claims seeking

unpaid attorney fees because it is clear that during the former representation of DELOREAN and LOGAN, MORGANROTH might have acquired and did in fact acquire information which is substantially related to the instant action. In this case, it is not a mere possibility that MORGANROTH will use DELOREAN and ECCLESIASTES' information against them. MORGANROTH has already exploited the information to conjure up his RICO claim, and he will continue to exploit such information as long as the RICO claim exists. If the possibility of an ethical violation dictated dismissal of all but the fee claim in Cannon, MORGANROTH's blatant, outrageous ethical violation requires dismissal of the RICO claim in this action. This Honorable Court should therefore order judgment against MORGANROTH's Count I RICO claim and Count 2 fraud claim, and allow MORGANROTH to go forward and seek to collect the unpaid fees alleged in Complaint Counts III-XII.

IV. CONCLUSION

In this motion for judgment on the pleadings, Defendants DELOREAN and ECCLESIASTES have established by reference only to MORGANROTH's own Complaint that Plaintiffs MORGANROTH represented Defendants for over 10 years, in a "multitude" of matters, that MORGANROTH might have and in fact did learn confidences, secrets and information from Defendants during the representation, and that MORGANROTH is now exploiting those very confidences, secrets and information to Defendants' detriment and MORGANROTH's attempted gain. In addition, Defendants have shown clearly that MORGANROTH's RICO claim is an egregious violation of his ethical duties toward DELOREAN and ECCLESIASTES and as

such said RICO claim must be dismissed by this Honorable Court.

For all the foregoing reasons, and based on this brief and the pleadings of the parties only, and based on any further briefs to be submitted by Defendants and on any oral argument which this Honorable Court may decide to hear on this matter, Defendants DELOREAN and ECCLESIASTES respectfully request that this Court order the entry of judgment against the Count I RICO claim in Plaintiffs, Complaint.

DATED: December 17, 1993.

Respectfully submitted,

FREIDBERG LAW CORP.

By /s/ Daniel Boone
DANIEL BOONE
Attorneys for Defendants
77 Cadillac Drive, Suite 240
Sacramento, CA 95825

PROOF OF SERVICE BY FEDERAL EXPRESS

I, MAXANNE A. THACKER, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 77 Cadillac Drive, Suite 240, Sacramento, California 95825, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice of Federal Express.

On December 18, 1993, the following documents:

BRIEF IN SUPPORT OF DEFENDANTS I MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT I (RICO) OF PLAINTIFFS' COMPLAINT;

were served by Federal Express in a sealed envelope, with postage fully prepaid, addressed to:

Mayer Morganroth, Esq.
Jeffrey Morganroth, Esq.
Morganroth & Morganroth
2000 Town Center, Suite 2000
Southfield, MI 48075

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 1993, in Sacramento, California.

/s/ Maxanne A. Thacker
MAXANNE A. THACKER

APPENDIX H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Defendants' Combined Reply Brief in Support of Defendants' Three Motions for Partial Summary Judgment Against Count I (RICO), For Judgment on The Pleadings Against Count I (RICO), and For Judgment On The Pleadings Against Count II, (Fraud)

District Court Case №. 93-CV-70848
Filed February 2, 1994

Pages H-1 thru H-22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Feb. 2, 1994**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

DEFENDANTS' COMBINED REPLY BRIEF IN SUPPORT OF DEFENDANTS' THREE MOTIONS FOR PARTIAL SUMMARY JUDGMENT AGAINST COUNT I (RICO), FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT I (RICO), AND FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT II (FRAUD)

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I. INTRODUCTION

This Honorable Court can resolve all four of Defendants pending motions with one finding: that Plaintiffs' Count I RICO claim and Count II fraud claim violate the Michigan Rules of Professional Conduct (MRPC) 1.6 and 1.9, and are therefore barred as a matter of law.

Plaintiffs' violation of MRPC 1.6 and 1.9 warrants the granting of Defendants' Motion for Partial Summary Judgment Against Count I (RICO), and the two Motions for Judgment on the Pleadings Against Count I (RICO) and Count II (Fraud). If these three motions are granted, Defendants' motion for separate trial becomes moot. All will be resolved, and Plaintiffs can still proceed to trial to pursue their $4.3 million fee claim.

If the RICO and fraud claims are not dismissed, the public policy and essential protections in MRPC 1.6 and 1.9 will be violated and rendered meaningless, and the very bedrock foundations of the client-lawyer relationship will be destroyed. This Honorable Court cannot condone such an outcome, and therefore must dismiss these two claims.

II. THE MERE POSSIBILITY THAT PLAINTIFFS MIGHT USE DEFENDANTS' CONFIDENCES OR SECRETS OR INFORMATION IS GROUNDS FOR DISMISSAL

Plaintiffs MORGANROTH's argument that they are not using confidences or secrets is irrelevant and misunderstands the law governing an attorney's ethical obligations. Under the T.C. Theatre-Cannon-Richardson[1] line of cases, it is not even

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[1] T.C.Theatre Corp. v. Warner Bros. Pictures, 113 F. Supp. 265 (S.D.N.Y. 1953). Cannon v. U.S. Acoustics Corp., 398 F.Supp. 209 (N.D. Ill. 1975), rev'd in part 532 F.2d 1118 (7th Cir. 1976). Richardson v. Hamilton Int'l Corp., 469 F.2d 1382

necessary to show that the attorney has actually used the information gained in the prior representation of the client. The attorney is disqualified upon a showing that the former attorney/client relationship existed, and that there is a "substantial relationship" between the subject matter of the prior representation and the subject matter of the instant litigation such that the information gained in the prior representation might be involved.[2] T.C. Theatre at 268-269. Cannon at 223. Richardson at 1385. These principles have been fully embraced by the Sixth Circuit Court of Appeals and by this Honorable Court. General Elec. Co. v. Valeron Corp., 428 F.Supp. 68, 72-74 (E.D.Mich. 1977), 608 F.2d 265, 267-68 (6th Cir. 1979). Anchor Packing Co. v. Pro-Seal, Inc., 688 F.Supp. 1215, 1220-1225 (E.D.Mich. 1988). These disqualification principles apply equally to an attorney-turned-litigant. Cannon 398 F.Supp. at 228. Richardson, supra. Hull v. Celanese Corp., 513 F.2d 568 (2nd Cir. 1975).

Thus, the breach of confidence does not have to be proved, it is presumed in order to preserve the spirit of the ethical rules against disclosure. Hull, supra, at 572; T.C. Theatre

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(3rd Cir. 1972).

[2] One Court Has disqualified a former attorney event though there was no chance that confidential information might be used against the former client. Brennan's Inc. v. Brennan's Restaurant, Inc. 590 F.2d 168, 172 (5th Cir. 1979). If there is any doubt about the receipt of confidential information during the representation, the doubt is resolved in favor of disqualification. General Elec. Co. v. Valeron Corp., 428 F.Supp. 68, 74 (E.D.Mich. 1977). Hull V. Celanese Corp., 513 F.2d 568, 570 (1975).

at 269. The lawyer's good faith is an "inadequate safeguard" in such a situation, because "even the most rigorous self-discipline might not prevent a lawyer from unconsciously using or manipulating a confidence acquired in the earlier representation and transforming it into a telling advantage in the subsequent litigation." Emle Industries, Inc. v. Patentex Inc., 478 F.2d 562, 571 (2nd Cir. 1973)

There is no dispute that an attorney/client relationship previously existed between Plaintiffs and no dispute over the "substantial relationship" between the subject matter of the prior representation and the instant litigation. MORGANROTH's own opposition brief admits this "substantial relationship" (MORGANROTH Opposition Brief, p. 32, first full paragraph). Since these two elements are established without dispute, the T.C. Theatre-Cannon-Richardson line of cases requires disqualification of MORGANROTH for violation of the ethical rules. In the context of the instant litigation, the disqualification-dismissal must be of the Count I RICO claim and Count II fraud claim, which are not "fee" claims as established and explained fully hereinbelow.

III. IN FACT, MORGANROTH IS CLEARLY USING SECRETS TO SUPPORT THE RICO AND FRAUD CLAIMS IN VIOLATION OF MRPC 1.6 AND 1.9

As established hereinabove, this Honorable Court must dismiss the RICO and fraud claims based upon a mere possibility that client information may be misused. In fact, MORGANROTH is far beyond mere possibility and is already misusing information from the prior representation in violation of MRPC 1.6 and 1.9.

MORGANROTH's opposition brief misguidedly focuses on attorney/ client privilege while ignoring the much broader prohibition against disclosure and use of client information as set forth in MRPC 1.6 and 1.9.[3]

MRPC 1.6(b)(1) prohibits an attorney from knowingly revealing a confidence or secret of a client. MRPC 1.6(a) defines "confidence" as information protected by the attorney/client privilege, but defines "secret" as "other information gained in the professional relationship...the disclosure of which...would be likely to be detrimental to the client." MRPC 1.9 extends an even broader protection to former clients, providing that the attorney shall not "use information relating to the (former) representation to the disadvantage of the former client...."

MORGANROTH's own pleadings and exhibits show conclusively that MORGANROTH is disclosing and using information from the prior representation to support the RICO and fraud claims to the detriment and disadvantage of DELOREAN and ECCLESIASTES. This violates the ethical rules.

MORGANROTH supports the RICO claim with Exhibits 1-57 attached to the Affirmation of Jeffrey B. Morganroth, Esq., of which 28 exhibits are clearly information gained in the

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[3] As one Court has stated in contrasting the two, "The attorney/client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, Exits without regard to the nature or source of information or the fact that others share the knowledge." Cannon, supra, 398 F.Supp. at 222.

professional relationship.[4] Most of the other exhibits consist of recent deposition testimony. MORGANROTH disingenuously argues that these are not "secrets" because they result from discovery in the instant action. The flaw in this argument is easy to spot. When MORGANROTH takes depositions in the instant case, he formulates questions and probes subjects based on the knowledge and information he gained while representing DELOREAN and ECCLESIASTES. This prohibited "use" of information relating to the former representation violates MRPC 1.9.

MORGANROTH's prohibited disclosure and exploitation of client information is further established by reading Counts I and II of the Complaint, which include 71 paragraphs of allegations, fictions, and half-truths, all based on information gained by MORGANROTH during the prior representation. Counts I and II would not exist but for MORGANROTH's representation of DELOREAN and ECCLESIASTES.

In sum, MORGANROTH's RICO and fraud claims are barred upon a mere showing of prior representation and a substantial relationship between the instant action and the prior representation. DELOREAN and ECCLESIASTES have shown MORGANROTH's actual disclosure and use of information from the prior representation, to support the RICO and fraud claims, a flagrant violation of MRPC 1.6 and 1.9 which requires dismissal of those claims.

IV. MORGANROTH'S $30 MILLION RICO AND $10

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[4] See Exhibits 2, 6-8, 11, 12, 14-17, 20-22, 27, 28, 38, 41, 42, 45-51, 54-56.

MILLION FRAUD CLAIMS ARE NOT "FEE" CLAIMS OR DEFENSES, AND THEREFORE DO NOT FALL WITHIN THE NARROW MRPC 1.6(c)(5) EXCEPTION

MORGANROTH argues that even if they are disclosing and using information from the prior representation to support their fraud and RICO claims, they are entitled to do so by the exception in MRPC 1.6(c)(5). This is a gross misreading of a very narrow exception.

The MRPC 1.6(c)(5) exception allows an attorney to reveal information only when "necessary to establish or collect a fee, or to defend the lawyer or lawyer's employees or associates against an accusation of wrongful conduct." This exception, on its face, allows disclosure only for these two narrow, limited purposes. MORGANROTH's RICO and fraud claims do not serve either of these purposes, and therefore do not fall within the exception.

MORGANROTH's "fee" claim appears in Complaint Counts III through XII. The "fee" claim is thus $4,358,689.26, not $30 million, and not $10 million.

MORGANROTH attempts to gloss over the clear "collect a fee" limitation in MRPC 1.6(c)(5) by arguing that they know of no case in which "the attorney who was wrongfully deprived of his fees is confined to a particular form of action." (MORGANROTH Opposition Brief at p. 20). MRPC 1.6 does not confine MORGANROTH to a particular form of action, but it clearly does prohibit disclosure except to "collect a fee". The "fee" in dispute in this action is $4.3 million, not $30 million or $10 million. MORGANROTH may be able to disclose information in support of their "fee" claims in Counts III through

XII, but they clearly may not do so in support of non-"fee" claims.[5]

MORGANROTH's opposition brief also confuses the concept of admissibility of evidence with the concept of standing to bring the RICO and fraud claims. MORGANROTH argues that evidence of the alleged RICO "schemes" and other wrongdoing will be admissible to prove the "fee" claims and to defend against Defendants' assertions that some of the fees are not owed because some of the work was improperly done, contending that DELOREAN has "opened the door" and "waived his right to preclude MORGANROTH from introducing such evidence" (MORGANROTH Opposition Brief, p. 32). MORGANROTH then bootstraps this "admissibility" concept into a more general argument that because the client information may be disclosed for a legitimate purpose under the (c)(5) exception, they can therefore disclose such information for any purpose they want. MORGANROTH's argument flies in the face of the narrow and limited (c)(5) exception.

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[5] This is the exact holding of Cannon, supra, in which the attorney-turned-litigant was allowed to pursue his fee claim but barred from pursuing his non-fee claims against a former client. Cannon is directly applicable to the instant situation and its holding is dispositive. Tellingly, MORGANROTH has not cited a single case in which an attorney brought RICO and fraud claims against a former client based on disclosure of the client's confidences and secrets. Two explanations come immediately to mind: other attorneys recognize their ethical obligations and so do not attempt such actions, and/or any attempt such as this one has been properly cut off and dismissed by the Courts to uphold the ethical rules.

Evidence of alleged "schemes" and wrongdoing may or may not be relevant and admissible to support the "fee" claim and counteract Defendants' contentions when the parties come to trial on Counts III through XII. This Honorable Court will make that determination at trial. The issue now is different. The issue now is not admissibility of evidence, but whether MORGANROTH has standing to pursue non-"fee" claims under the narrow (c)(5) exception. As Cannon has held, and the language of (c)(5) clearly states, he does not.[6]

It is consistent with evidentiary principles and the public policy behind MRPC 1.6 and 1.9 that MORGANROTH may be allowed to disclose information for limited legitimate purposes, but barred from disclosing for other purposes. The ethical rules prohibiting disclosure and use of client information to the client's detriment are fundamental to the client/lawyer relationship because they encourage free and full disclosure by the client, even as to embarrassing or legally damaging subject matter, so that the attorney will be fully informed of all the facts essential to proper representation of the client. Comment, MRPC 1.6. Cannon, supra, 308 F.Supp. at 221-22.

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[6] MORGANROTH attempts to escape the dispositive holdings in Cannon and Richardson based on the same incorrect "admissibility" argument, claiming those cases are inapplicable because they did not involve claims of attorney misconduct and therefore did not "open the door" to evidentiary disclosure as this case does. If the Cannon attorney/litigant had faced claims of negligence by his former client, he may have been entitled to reveal additional client information if necessary to defend those claims, but he still would not have been allowed to proceed with his non-"fee" claims.

MRPC 1.6(c)(5) carves an extremely narrow exception into this strong prohibition against disclosure, allowing only that scarce amount of disclosure necessary for an attorney to collect a fee or himself.[7] The carefully drawn (c)(5) exception is obviously not designed to turn the attorney's ethical obligations upside down, and allow an attorney to make wholesale disclosure of client information to support RICO or fraud claims which seek not to collect the attorney's "fee", but six times the "fee".

This Honorable Court cannot fail to see that allowing MORGANROTH's RICO and fraud claims to go forward will obliterate the essential protections established by MRPC 1.6 and 1.9 and render the limitations in 1.6(c)(5) meaningless. If attorneys are allowed to sue their clients and disclose client information in this manner, then clients will cease seeking out attorneys to help them and cease free and full disclosure to attorneys as a matter of self preservation. This is the exact opposite of the intent and policy behind the ethical rules. This Honorable Court cannot possibly condone such an outcome.

In sum, it is essential to remember that granting the instant motions and dismissing Counts I (RICO) and II (Fraud) does not put Plaintiffs out of Court. They will still have ten Counts to pursue their $4.3 million "fee" claim. This is clearly

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[7] The Comment to MRPC 1.6 makes clear that the disclosure for these limited purposes is to be as narrow as possible, made so as to limit access to the information to those with a need to know it, and that the attorney should obtain protective orders or make other arrangements minimizing the extent of disclosure. In this case, MORGANROTH has followed the opposite path, filing a Complaint which discloses fact, fiction and half-truth conjured up from information learned during the prior representation.

the proper outcome. Like the attorney-turned-litigant in Cannon, Plaintiffs may pursue their "fee" claim against former clients, but are barred from pursuing the non-"fee" claims. By dismissing Counts I and II, this Honorable Court will ensure that the integrity of MRPC 1.6 and 1.9 remains intact, and the essential full and free disclosure between client and attorney is protected.

V. MORGANROTH'S EVIDENTIARY SHOWING HAS FAILED TO RAISE A TRIABLE ISSUE OF FACT AS TO THE EXISTENCE OF A RICO "ENTERPRISE" AND "PATTERN OF RACKETEERING ACTIVITY" A VIOLATION OF RICO §1962(a)(b)(c) OR (d), OR TO DEMONSTRATE ANY INJURY TO BUSINESS OR PROPERTY "BY REASON OF" A VIOLATION OF RICO §1962

As has now been clearly established in Defendants' prior briefs and hereinabove in this reply brief, MORGANROTH's RICO and fraud claims are barred and must be dismissed as a matter of law as violations of MRPC 1.6 and 1.9. Therefore, the absence of evidence to support the RICO claim is moot, and this Honorable Court should not have to waste more of its precious time and resources wading through MORGANROTH's 66 page opposition brief and Exhibits 1-57 in search of non-existent triable issues of fact. However, in the interest of thoroughness, Defendants offer a necessarily skeletal (due to page restrictions) reply to MORGANROTH's mish-mash, "throw it all up against the wall and hope something sticks" evidentiary showing.

A party opposing summary judgment is required to present significant probative evidence supporting the claimed factual dispute, such that a jury or judge must resolve the truth of the dispute at trial. First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 288-289 (1968). Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 248-49 (1986). MORGANROTH fails to present significant probative evidence on several key RICO elements.

The tale of MORGANROTH's evidentiary shortcomings is fully foreshadowed and told in the melodramatic first sentence of the opposition brief Is purported "Statement of Facts": "This is a case about the dark side of the 'American Dream." MORGANROTH cites no evidence in support of this "fact", then litters the rest of the first paragraph with more manufactured melodrama to draw attention away from the complete lack of evidence: "criminal network", "illicit activities",, "unsuspecting public", "ensnared in a trap", "steal their money", "illegal and fraudulent schemes", "line its own pocket", "unsuspecting attorneys", "ill-gotten gains", "fraudulently induced", "false promises". Not a "fact" in the bunch. Not a shred of supporting evidence. It is not enough for MORGANROTH to claim that a jury might believe such wild, unsupported statements. Their burden is to present concrete evidence on which a reasonable juror could find in their favor. Frank v. D'Ambrosi, 4 F.3d 1378, 1384 (6th Cir. 1993).

After this spree of attempted character assassination, MORGANROTH continues this tale and eventually does cite to the purported "evidence" in Exhibits 1-57. However, this supposed "evidence" is no more accurate or enlightening than the bombast of the first paragraph, because the supposed "evidence" is often incompetent and/or conclusory, and rarely establishes the points MORGANROTH claims it establishes.[8]

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[8] For an excruciatingly thorough analysis of the dreadful shortcomings of MORGANROTH's supposed "evidence", please

In sum, MORGANROTH's evidentiary showing falls far short of establishing triable issues of fact on the essential elements of a RICO claim, and that claim must therefore be dismissed on summary judgment.

A. MORGANROTH'S EVIDENCE FAILS TO RAISE EVEN A TRIABLE ISSUE OF FACT OVER THE EXISTENCE OF A RICO "ENTERPRISE"

MORGANROTH has failed to produce significant probative evidence of an "ongoing organization" which functions as a "continuing unit" with a decision-making structure controlling the affairs of the enterprise on an ongoing rather than an ad hoc basis. U.S. v. Turkette, 452 U.S. 576, 583 (1981). United States v. Riccobene, 709 F.2d 214, 222 (3rd Cir. 1983), cert. denied, 464 U.S. 849 (1983).

MORGANROTH's attempt to conjure up an enterprise where none exists simply by assigning organizational titles to the imagined members is desperately creative, but it is not evidence. This is typical of MORGANROTH's evidentiary showing throughout: when no evidence exists of a real enterprise or structure or pattern or violation or injury, they just make it up.

MORGANROTH has shown no ongoingness, no continuity, and no controlling structure among the members of the purported enterprise. This fails to meet the legal standards for a RICO enterprise established by Turkette and the other cases cited in Defendants, moving brief. On that basis alone, MORGANROTH's RICO claim must be dismissed.

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see Defendants' Objections to Evidence and Factual Statements Submitted by Plaintiffs in Support of opposition to Motion for Summary Judgment, filed concurrently herewith.

B. MORGANROTH HAS FAILED TO PRODUCE EVIDENCE TO ESTABLISH THE EXISTENCE OF A RICO "PATTERN OF RACKETEERING ACTIVITY"

MORGANROTH has also failed to produce significant probative evidence establishing a "pattern of racketeering activity" with "relatedness" and "continuity" as defined in H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 239 (1989), Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985) and especially Vild v. Visconsi, 95 F.2d 560, 565-69 (6th Cir. 1992).

MORGANROTH's silence regarding the Vild case is deafening. Even if each of the alleged predicate acts occurred (though MORGANROTH has failed to present evidence proving that), there is absolutely no showing of a relationship between the alleged predicates aimed at others and the alleged predicates aimed at MORGANROTH, nor evidence of interrelatedness among any of the predicates nor among any of the alleged "schemes". MORGANROTH argues that they are related and attempts to manufacture connections between them, but again those connections are all made up. There is no evidence that they are connected or related, either horizontally to each other, or vertically to the enterprise. U.S. v. Long, 917 F.2d 691, 697 (2d Cir. 1990). Iannello v. U.S., 10 F.3d 59, 62 (2d Cir. 1993).

In short, MORGANROTH has failed to show that predicate acts were committed by Defendants, or that the alleged predicate acts are interrelated in any way. Again, on this basis alone, MORGANROTH's RICO claim must be dismissed.

C. MORGANROTH HAS FAILED TO PRESENT EVIDENCE SHOWING A VIOLATION OF RICO 91962(a)(b)(c) OR (d)

MORGANROTH's attempt to show a violation of RICO

§1962 starts with two big strikes against it: MORGANROTH's failure to present evidence of the essential "enterprise" and "pattern of racketeering activity". Without these elements, a violation of section 1962 is impossible.

The third strike is MORGANROTH's purported evidence, which utterly fails to show commission of the acts which constitute the violation of section 1962. MORGANROTH has presented no substantial probative evidence to show a use or investment of racketeering income in an enterprise, control of an enterprise through racketeering, or conduct of or participation in an enterprise through racketeering. Again, on this basis alone, MORGANROTH's RICO claim must be dismissed.

D. MORGANROTH HAS FAILED TO PRESENT EVIDENCE OF INJURY TO BUSINESS OR PROPERTY "BY REASON OF" A VIOLATION OF RICO §1962

MORGANROTH has failed to show evidence of a violation of RICO §1962, and therefore also fails to show evidence of any injury to business or property "by reason of" a violation of section 1962. Moreover, MORGANROTH has even failed to link up the imagined violations of section 1962 with the injuries claimed in the instant litigation.

There is absolutely no evidence that MORGANROTH was injured by a use or investment of racketeering income in an enterprise. There is absolutely no evidence that MORGANROTH was injured by control of an enterprise through racketeering.[9]

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[9] Though MORGANROTH's opposition brief confuses the point, it is clear that any injury attributable to a violation of §1962(a) or (b) must be caused by the use or investment in or control of the enterprise, not by the predicate acts themselves.

There is absolutely no evidence that MORGANROTH was injured by conduct of or participation in an enterprise.

MORGANROTH's "fee" claim (Counts III through XII of the Complaint) is $4.3 million. MORGANROTH's RICO claim is $10.4 million. There is no evidence of what the other $6.1 million in damages is comprised of, much less how such damages were "caused" by Defendants' interaction with an enterprise. We have only MORGANROTH's own unsupported allegations of lost clients, resources, and additional income. As in each of the failures detailed hereinabove, this failure of evidence in and of itself warrants dismissal of MORGANROTH's RICO claim.

VI. CONCLUSION

MORGANROTH's pursuit of the RICO and fraud claims against former clients violates MRPC 1.6 and 1.9 and must therefore be dismissed as a matter of law. The RICO claim will be dismissed by granting either Defendants' motion for partial summary judgment or Defendants' motion for judgment on the pleadings. The fraud claim will be dismissed by granting Defendants' motion for judgment on the pleadings against the fraud claim.

Besides the ethical violation, there is also no evidence to raise a triable issue of fact regarding the existence of several key elements of MORGANROTH's RICO claim. The failure of any one of these elements warrants dismissal of the RICO claim.

Defendants cited several cases in their prior brief. The latest confirmation is Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1188, 1190 (3d. Cir. 1993).

Granting Defendants' motion for partial summary judgment on this basis will dismiss the RICO claim.

For all the foregoing reasons, and based on all the facts, arguments and authorities cited hereinabove and in Defendants, prior briefs in support of these motions, Defendants respectfully request that this Honorable Court grant either Defendants' motion for partial summary judgment against Plaintiffs' RICO claim or Defendants' motion for judgment on the pleadings against Plaintiffs' RICO claim, and also grant Defendants' motion for judgment on the pleadings against Plaintiffs' fraud claim.

DATED: February 21, 1994

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Daniel Boone
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Sacramento, CA 95825

PROOF OF SERVICE BY FEDERAL EXPRESS

I, MAXANNE A. THACKER, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 77 Cadillac Drive, Suite 240, Sacramento, California 95825, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice of Federal Express.

On December 18, 1993, the following documents:

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST COUNT I (RICO) OF PLAINTIFFS' COMPLAINT;

were served by Federal Express in a sealed envelope, with postage fully prepaid, addressed to:

Mayer Morganroth, Esq.
Jeffrey Morganroth, Esq.
Morganroth & Morganroth
2000 Town Center, Suite 2000
Southfield, MI 48075

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 1993, in Sacramento, California.

/s/ Maxanne A. Thacker
MAXANNE A. THACKER

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Brief In Support of Defendants'
Motion For Judgment As A Matter of Law
(FRCP 50(a))

District Court Case Nº. 93-CV-70848
Filed December 5, 1994

Pages I-1 thru I-41

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Dec. 5, 1994**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

BRIEF IN SUPPORT OF DEFENDANTS
MOTION FOR JUDGMENT
AS A MATTER OF LAW (FRCP 50(a))

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I. INTRODUCTION

At the close of Plaintiffs' case, Defendants JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, pursuant to Federal Rules of Civil Procedure, Rule 50 (A), move the Court for judgment as a matter of law of any claim asserted by Plaintiffs of entitlement to recovery premised upon violation of the Racketeer Influenced and Corruption organizations Act (RICO). Said claim was originally alleged as Count I of Plaintiffs' Complaint and has been incorporated in the Joint Pretrial Order. (Joint Pretrial Order, p. 1).

Defendants' motion seeks judgment on the entirety of Plaintiffs' RICO claim. Nonetheless, should the Court conclude that said relief not be presently granted, Defendants seek an order from the Court limiting in various ways and means, Plaintiffs' RICO claim and its eventual presentation to the jury for consideration. In this regard, Defendants' motion has two aspects. First, Plaintiffs should be limited to argument and reliance upon only those alleged predicate acts and "schemes" upon which there is adequate evidentiary showing to present a triable issue for jury resolution. Second, Plaintiffs' RICO claim must be limited to only such damages as are legally allowable and/or for which an adequate evidentiary showing has been made. For example, as a matter of law emotional distress damages are not allowable under RICO and no claimed entitlement thereto should be presented to the jury. Genty v. Resolution Trust Corp., 937 F.2d 899 (3rd Cir. 1991). As further example, Plaintiffs' evidence entirely fails to establish the fact of any "lost profit" damages and therefore any such claim should not be presented to the jury.

Defendants submit this brief to assist the Court with its consideration of Defendants' motion for judgment as a matter of law. In so doing, Defendants do not set forth in detail the state of the evidence upon close of Plaintiffs' case (this may be more appropriately phrased as the "lack of evidence"). Counsel shall discuss with the Court the state of the record upon argument of this motion and the Court is otherwise no doubt well conversant with the record. This brief merely serves to place before the Court some of the germane legal principles that compel grant of the relief sought and acts as a framework for the Court's consideration of Defendants' motion.

II. THE LAW RE: MOTION FOR JUDGMENT AS A MATTER OF LAW

As amended in 1991, Federal Rules of Civil Procedure, Rule 50(A) reads as follows:

> "(A) Judgment as a matter of law. (1) if during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue. (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the

facts on which the moving party is entitled to judgment."

It is thus the burden, duty and obligation of the Plaintiffs to present evidence of sufficient substance upon which any reasonable jury can deliberate and from which the law can support a finding in favor of the Plaintiffs upon each of the Plaintiffs, claimed causes of action. Failure to present such evidence, precludes the Plaintiffs from "going to the jury" upon such claim or claims and mandates that any claim failing to be sufficiently supported by the evidence must be dismissed.

Here, the Plaintiffs have been fully heard and there is no legally sufficient evidentiary basis for a reasonable jury to find for Plaintiffs on their claims for recovery under the RICO cause of action. While the Court in consideration of a motion under Rule 50 (A) must consider the evidence in the light most favorable to the opposing party, it is nonetheless the Plaintiffs' burden to produce evidence of a substantial nature on each element of its claim. A mere scintilla of evidence is insufficient to allow submission of a claim to the jury; to create a conflict in the evidence for jury resolution, there must be a conflict of substantial evidence. J.E.K. Industries Inc. v. Shoemaker, 763 F.2d 348 (8th Cir. 1985); 28, Federal Procedure, Lawyers Edition, Section 62:662 (1984).

Evaluation of a motion for judgment as a matter of law involves a legal analysis of whether the evidence presented is legally sufficient for the jury to consider. (Advisory Committee Notes to Rule 50). As set forth below, there are certain fundamental, threshold requirements for maintenance of a RICO cause of action which must be met. It is respectfully submitted that under Rule 50(A) and the applicable test for judgment as a

matter of law, Plaintiffs have failed to meet such requirements and therefore Defendants are entitled to judgment as a matter of law on Plaintiffs' RICO claims.

It is respectfully submitted that such is the case and that it is the duty of this Honorable Court to presently excise from this action those claims which lack sufficient evidentiary support for the jury's consideration.[1] In exercising such duty and power, the Court must view the evidence in the light most favorable to the Plaintiffs and test such evidence against the elements of the cause of action which Plaintiffs assert. O'Neill v. Kilediian, 571 F.2d 511, 513 (6th Cir. 1975).

It is respectfully submitted that Plaintiffs have had their "day in court" on all allegations of liability against the Defendants.[2] Upon close of the evidence, it is clear that there is no RICO cause of action which can survive and that to

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[1]This brief specifically addresses the RICO claim. Defendants contend that others of Plaintiffs' claims similarly lack sufficient legal or evidentiary support for presentation to the jury. (For example, the quantum meruit and unjust enrichment claims).

[2]This Honorable Court previously denied Defendants' motion to dismiss the RICO cause of action and for partial summary judgment on the RICO cause of action in part upon Plaintiffs' representations regarding what evidence would be presented to the jury. Plaintiffs have now had more than adequate opportunity to support the RICO claim with credible evidence but have wholly failed to do so. It is time to unburden the judicial system generally and this Court and jury specifically from Plaintiffs' specious RICO claim.

promote the ends of justice, such claim must now, at long last, be dismissed.

III. THE APPLICABLE RICO LAW

To prevail on a RICO claim, the plaintiff must prove each and every element of an injurious RICO violation. This is an arduous task for any plaintiff and one wholly unmet by the Plaintiffs herein. To "get to the jury" with the RICO claim, Plaintiffs must have substantial credible evidence supporting each element of their RICO claim. This burden is likewise unsatisfied by Plaintiffs' presentation.

A. PLAINTIFFS FAILED TO PRODUCE SUFFICIENT EVIDENCE OF A RICO "ENTERPRISE".

Proof of a RICO "enterprise" is an essential, indispensable threshold element of any RICO claim. If there is no RICO enterprise, there can be no RICO violation. Appley v. West, 832 F.2d 1021, 1028 (7th Cir. 1987). Montesano v. Seafirst Commercial Corp., 818 F.2d 423, 426 (5th Cir. 1987). United States v. Zielie, 734 F.2d 1447, 1463 (lith Cir. 1984), cert. denied 469 U.S. 1184 (1985).

Compensable injury under Section 1964(c) is an injury to business and property "by reason of" a violation of RICO §1962. Yellow Bus Lines v. Local Union 639, 913 F.2d 948, 954-955 (D.C.Cir. 1990). Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). The violation of RICO does not lie in the mere commission of the predicate acts listed in RICO §1961(l). Rather, the violation of RICO occurs only when such a person engages in a pattern of racketeering activity connected to the acquisition, establishment, conduct or control of an enterprise. Calcasieu Marine Nat. Bank v. Grant, 943 F.2d 1453, 1461 (5th

Cir. 1991). For example, violation of RICO §1962(a) only occurs when a person uses or invests racketeering income in an enterprise. Sedima at 495. As the Court observed regarding RICO §1962(a) in Grider v. Texas Oil and Gas Corp., 868 F.2d 1147, 1149 (10th Cir. 1989) cert. denied 493 U.S. 820 (1991):

> "Significantly, the statute does not state that it is unlawful to receive racketeering income; rather...the statute prohibits a person who has received such income from using and investing it in the proscribed manner." [Emphasis in original].

As the statutory language makes clear, the prohibited use or investment must be in an enterprise. RICO §1962(a).

Violation of Sections 1962(b), (c) and (d) also require existence of an enterprise. The violation under Section 1962(b) is the acquisition or maintenance of an interest in or control of an enterprise, while the violation under Section 1962(c) is the conduct of an enterprise through a pattern of racketeering activity. Sedima, surra at 495.

RICO §1961(4) defines an enterprise as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." [Emphasis added.]

The Supreme Court, describing an "associated in fact" RICO enterprise, has stated that "The enterprise is an entity, for present purposes a group of persons associated together for a common-- purpose of engaging in a course of conduct." U.S. v. Turkette, 452 U.S. 576, 583 (1981). The Supreme Court in Turkette also established the evidentiary requirements for proof of an "associated in fact" enterprise, stating that such an

enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that--the various associates function as a continuing unit." [(Emphasis added.] Turkette, at 583.

Construing the Turkette "ongoing organization" and "continuing unit" requirements, courts have held that a RICO plaintiff "must show that some sort of structure exists within the ground for the making of decisions, whether it be hierarchical or consensual. There must some mechanism for controlling and directing the affairs of the group on an on-going, rather than an ad hoc, basis." United States v. Riccobene, 709 F.2d 214, 222 (3rd Cir. 1983), cert. denied, 464 U.S. 849 (1983). Delta Truck & Tractor. Inc. v. J.I. Case Co., 855 F.2d 241, 243 (5th Cir. 1988), cert. denied, 489 U.S. 1079 (1989).

As will be discussed upon argument of this motion, there is no evidence here of any "enterprise", or any "continuing unit", or any "structure" or mechanism, "controlling and directing the affairs of the group." There is, in fact, no evidence of any "group." There is only Defendant DELOREAN and/or Defendant ECCLESIASTES. The record is clear that Defendant DELOREAN acted alone, without participation of other alleged members of the enterprise in dealing with the Plaintiffs; there was no "common purpose" between and among the alleged members of the enterprise.[3]

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[3]There is no evidence that any member of the supposed "enterprise" other than DELOREAN individually or Logan had or would have the slightest interest in whether attorneys fees were paid to the Plaintiffs. Surely neither the deceased Chapman nor the incarcerated Bushell could care less about DELOREAN's

Moreover, the record is clear that the former Logan Manufacturing Company was not a member of the hypothetical "enterprise" under the control of Defendant DELOREAN. Logan operated through its officers including Mike Beeley and Mel Mitchell. Mr. Beeley, as president of Logan and Mr. Mitchell as chief financial officer did not always follow directions from DELOREAN but received input and advice from attorneys and accountants, including Mr. MORGANROTH. Logan, through Beeley and Mitchell followed the advice of its accountants and lawyers even if it contradicted DELOREAN's views. Moreover, for a large period of time during the existence of the supposed "enterprise", Logan was entirely under the control of persons other than DELOREAN and it was not until August of 1987 that DELOREAN was allowed to again take a management role in that company.

Further, Plaintiffs have not presented evidence that the alleged "enterprise" is distinct from the named Defendants. There must be a distinct separation between the named Defendants and the "enterprise" which the Defendants allegedly control. Thus, a corporation cannot be liable for participating in an enterprise consisting of its agents or members. Davis v. Mutual Life Insurance Co. of New York, 6 F.3d 367, 377-378 (6th Cir. 1993).

> "Under the 'non identity' or 'distinctness' requirement, a corporation may not be liable under section 1962(c) for participating in the acts of an enterprise that consists only of its own subdivisions, agents, or members. An

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financial arrangements with the Plaintiffs.

> organization cannot join with its own members to undertake regular corporate activity and thereby become an enterprise distinct from itself."

Likewise, a person alleged to have committed a RICO violation must be distinct from the enterprise itself. Guzowski v. Harten, 969 F.2d 211, 215 (6th Cir. 1992). The same rules apply if the alleged enterprise is one characterized as an "association in fact enterprise." (See, Fleischhauer v. Feltner, 879 F.2d 1290, 1297 (6th Cir. 1989)).

In accord with the sixth circuit, is the decisions of the Third Circuit. In Glessner v. Kenny, 952 F.2d 702, 713 (3rd Cir. 1991), the court found that a corporation and its officers were not distinct such as to establish an "enterprise":

> Meenan and Blueray, had no separate active roles in the actions of their agents and affiliates that also comprise part of Plaintiff's alleged "association in fact." Therefore, we conclude that Plaintiff's attempt to circumvent Enright by pleading the association in fact theory must be rejected.

(See also, Atkinson v. Anadarico Bank and Trust, 808 F-2d 438, 441 (5th Cir. 1987)).

Here, the Plaintiffs have attempted to create a fictional "enterprise" by pleading the participation in such "enterprise" by persons other than the named Defendants.[4] However, the

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[4]While for pleading and summary judgment purposes, Plaintiffs might avoid dismissal by asserting involvement of others, the evidentiary record now demonstrates that such

evidence establishes that there was no "group" of persons or entities participating as an "enterprise." There is only the named defendants, if anyone, and as such the evidence fails to establish existence of the "enterprise" element of a RICO claim.

In pretrial discovery, Plaintiffs asserted that Roy Nesseth was a member of the "enterprise". Yet, the only shred of evidence in the record regarding Roy Nesseth's involvement demonstrates a communication in 1987 whereby MORGANROTH reduced a billing to Logan Manufacturing in response to Mr. Nesseth's request and that billing was paid. There is no evidence that there was any scheme to defraud in this event nor that any misrepresentation occurred. These facts demonstrate the opposite of any predicate act of mail or wire fraud.

In fact, it appears that Mr. MORGANROTH totally forgot about this particular incident thereby dispelling any possible contention that he relied upon any representation made by Mr. Nesseth. Further, the record is clear that Mr. MORGANROTH did not like Mr. Nesseth, did not communicate with Mr. Nesseth about attorneys fees regarding DELOREAN himself and other than this forgotten incident did not communicate with him regarding attorneys fees charged to Logan. Thus, with Nesseth, there is an abject lack of any evidence of participation in any "schemes to defraud", any enterprise, any "pattern of racketeering activity",, any act of mail or wire fraud directed to the Plaintiffs and any injury sustained by Plaintiffs "by reason of" any conduct of Mr. Nesseth either

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assertions are not supported by substantial evidence.

individually or as part of any alleged "enterprise." Moreover, Nesseth was an employee or agent of Logan and thus once again the requirement of "distinctness" is absent.

While the ludicrous nature of Plaintiffs' assertions are crystallized by the contention that the long-deceased Colin Chapman is and remains a member of the enterprise, the lack of evidence to sustain a finding of an "enterprise" does not cease there. The catalog of failure of proof will be evident to this Honorable Court and indexed by counsel at argument.

Among Plaintiffs failure of proof, however, must be included the failure to prove the alleged attorney "schemes." This failure impacts not only the element of an "enterprise" but also the element of a "pattern of racketeering activity." An "enterprise" is distinct from a "pattern of racketeering activity" in that an "enterprise" is an "entity" while a "pattern of racketeering activity" is a series of criminal acts as defined by RICO §1961(l). Turkette, surra at p. 587. Here, there are no attorney "schemes" but even if some scintilla of evidence were to exist regarding such alleged "schemes", there is no evidence that any "entity", i.e. an "enterprise" participated therein. In particular, there is no evidence of any "enterprise" scheming to injure Plaintiffs with regard to attorneys fees. Under the evidence presented in Plaintiffs' case, Defendants had every reason and justification not to pay the inflated, undocumented and undefined fee demands of Plaintiffs; Defendants non-payment of these demands was not the product of some RICO "enterprise", but rather the result of Plaintiffs' own neglectful and overreaching conduct.[5]

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[5]In fact, the record is clear that prior to presentation of Plaintiffs' multi-million dollar, undocumented billings in the

Existence of a RICO "enterprise" is an essential element of Plaintiffs' RICO claim which on the instant record cannot be established. It is respectfully submitted that for this reason alone, the instant motion should be granted.

B. PLAINTIFFS FAILED TO PRODUCE SUFFICIENT EVIDENCE OF A RICO "PATTERN OF RACKETEERING ACTIVITY"

In addition to establishing the element of an "enterprise", the plaintiff bears the burden and responsibility of proving a "pattern of racketeering activity." If no such pattern exists and this element of the claim cannot be proven, there is no RICO violation and no valid RICO claim. Calcasieu, supra at p. 1461.

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latter part of 1990, Logan and DELOREAN paid Plaintiffs' bills and various expenses. (Plaintiffs, of course, had no system to account for the entirety of these payments.) In August 1987, DELOREAN and Logan combined to pay $450,000 on bills submitted by Plaintiffs. In June 1988, Plaintiffs billing to Logan was again paid. (See, Exhibit 2346.) In August 1988, another $53,500 was paid. (Not only could Plaintiffs not account for such payment, Plaintiffs failed to produce any records demonstrating this payment.) In April 1989, Plaintiffs billed for and were paid an additional $212,440. In September 1989, Plaintiffs submitted a document which they concede was not a bill since it included approximately $165,000 for fees in the Cork Gully matter which was, in fact, a contingency fee matter. Not until the mammoth bill of fall 1990, did Plaintiffs render any billing that was not paid. This record demonstrates that there was no "scheme to defraud" by anyone and certainly that there was no "scheme to defraud" engaged in by an "enterprise."

Violation of the RICO statutes does not incur upon a "mere commission of the predicate offenses." Sedima, supra at p. 496. Rather, the RICO violation is "to use money derived from a pattern of racketeering activity to invest in an enterprise, to acquire control of an enterprise through a pattern of racketeering activity, or to conduct an enterprise through a pattern of racketeering activity. Sections 1962 (a)-(c)." Sedima, supra at p. 495. As is apparent from the statutory language of RICO and the Supreme Court's decisions, proof of a "pattern of racketeering activity" is essential to maintenance of any RICO claims.

RICO §1961(l) defines "racketeering activity" as violation of the specifically enumerated criminal acts listed therein. Only those criminal acts listed in RICO §1961(l) may constitute "racketeering activity" for purposes of establishing a RICO violation. DeLorean v. Cork Gully, supra at p. 939-940; Lewis v. Sporck, 612 F.Supp. 1316, 1325 (D.C. Cal. 1985).

RICO §1961(5) defines "pattern of racketeering activity" as requiring at least two acts of "racketeering activity" as defined by section 1961(l). Construing the language of section 1961(5), the Supreme Court mandates that in order to prove a "pattern of racketeering activity" a plaintiff, "must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." H.J. Inc. v. Northwestern Bell Telephone Co., (1989) 492 U.S. 229, 239; Sedima, supra at p. 496.

Thus, to establish the element of a "pattern of racketeering activity", the plaintiff must present sufficient evidence to establish that "racketeering activity" has in fact occurred on at least two occasions and that the racketeering

activity is in some manner related. For purposes of RICO violations, predicate acts are "related" if they have, "the same or similar purposes, results, participants, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." H.J. Inc., supra at p. 240; Sedima, supra at p. 496, fn. 14. On the present record, Plaintiffs not only have no evidence demonstrating that Defendants committed any RICO predicate acts, but Plaintiffs also failed to present sufficient credible evidence that any contended predicate acts are "related."

The burden of proving a "pattern of racketeering activity" encompasses the burden of proving every element of each of the alleged predicate acts. United States v. Watchmaker, 761 F.2d 1459-1471 (11th Cir. 1985), cert. denied, 474 U.S. 1100 (1986). Without sufficient evidence to support each alleged predicate act, the predicate act may not be considered in determining the existence of a "pattern of racketeering activity." Lou v. Belzger, 728 F.Supp. 1010, 1025 (S.D.N.Y. 1990). Obviously, if there is insufficient evidence of the alleged predicate acts and/or no predicate acts at all, there can be RICO "pattern of racketeering activity." Asch v. Philips, Appel & Walden, Inc., 867 F.2d 776, 777 (2nd Cir. 1989), cert. denied, 493 U.S. 835 (1989).

C. PLAINTIFFS FAILED TO PRODUCE SUFFICIENT EVIDENCE OF REASONABLE RELIANCE TO ESTABLISH ANY PREDICATE ACTS OF MAIL OR WIRE FRAUD

Plaintiffs allege various schemes including the infamous "attorney schemes." Yet Plaintiffs have produced no substantial evidence that the alleged predicate acts of mail and/or wire fraud were committed with regard to any such schemes. Presently, the

parties are beyond the pleading stage and beyond the otherwise drastic remedy of summary judgment. Plaintiffs have had a full opportunity to present evidence of a substantial nature on the elements of asserted mail and wire fraud against them and the other alleged victims of such conduct. Plaintiffs are well familiar with the proofs required by allegation of such predicate acts as Judge Zatkoff set them forth in his decision in DeLorean V. Cork Gully, supra at p. 940:

> "Wire fraud encompasses the same elements, differing from mail fraud only in the instrumentality employed. (Citation omitted). Plaintiffs must demonstrate that the Defendants made intentional misrepresentations to the Plaintiffs, that the Plaintiffs were deceived, and that the Plaintiffs were induced to part with money or property in reliance on the alleged misrepresentations. See Warren v. Manufacturers National Bank of Detroit, 759 F.2d 542, 545 (6th Cir. 1985)."

As articulated by Judge Zatkoff, the Plaintiffs must produce evidence that they were "deceived" and that they relied upon the representations of the Defendants. Under no stretch of the imagination is there any evidence that the Plaintiffs were deceived and/or relied upon any supposed representation made by anyone other than Defendant DELOREAN. Again, if Defendant DELOREAN made any deceptive representation upon which Plaintiffs reasonably relied, it was on his own behalf and not in furtherance of, in management or control of or as a representative of an "enterprise."

It is axiomatic that to prove fraud of any species, including mail or wire fraud, the complaining party must demonstrate reasonable reliance. (See, Bender v. Southland Corporation, 749 F.2d 1205, 1216 (6th Cir. 1984). In the case of Grantham and Mann v. American Safety Products, 831 F.2d 596, 606, (6th Cir. 1987) the Court of Appeal upheld a directed verdict granted in favor of a RICO defendant on the basis that the evidence presented failed to establish reasonable reliance upon the alleged misrepresentations:

> "As for the Day incident correspondence, Grantham's pleadings and proof at trial demonstrate that it was in no way deceived by ASP's October mailings and in no way relied on those letters to its detriment....Clearly, any injury which Grantham allegedly suffered could not have resulted from misrepresentations or omissions of material fact and ASP's correspondence on which Grantham did not rely. Assuming, therefore, that Grantham was injured in its business by ASP's conduct, he was injured by virtue of being denied the distributorship of the Day territory, and effect proximately caused solely by ASP's breach of its contract with Grantham. Accordingly, since Grantham failed to establish either the injury or the causation necessary for a section 1964(c) RICO claim, the District Court's directed verdict must stand."

In the instant case, the Plaintiffs plead and the record demonstrates that Plaintiffs were well aware of all of the supposed "attorney schemes", long before the asserted fraudulent

misrepresentations were made. In fact, Plaintiffs represented DELOREAN with regard to the Simon matter; Plaintiffs represented DELOREAN in the Garratt matter which arose out of the litigation originally handled by McConnell; Plaintiffs were fully conversant with the fee disputes between DELOREAN and Weitzman and Plaintiffs were intimately familiar with the relationship between Kimmerly and DELOREAN and the alleged facts with regard to their financial relationship. In fact, MORGANROTH contends he was intimately familiar with all aspects of DELOREAN's financial life.

Separate and apart from such specific information with regard to Defendant DELOREAN, Plaintiffs had experience with other clients in which alleged reliance upon communications with clients subsequently proved to be unjustified. Moreover, Plaintiff wholly failed themselves to document their billings, their communications regarding fees and their fee agreement arrangement. In all aspects of Plaintiffs' conduct with regard to their billings and fees, Plaintiffs did not act reasonably. Plaintiffs were gambling that the results of their representation would be so satisfying and spectacular that the client would pay without regard to the details and lack of documentation. Plaintiffs have failed to present substantial evidence that they reasonably relied upon alleged fraudulent misrepresentations of the Defendants.[6]

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[6]Defendants, of course, deny that any fraudulent misrepresentations to any of the lawyers in the alleged attorney schemes occurred. Further, as discussed elsewhere, Plaintiffs have failed to establish a substantial evidentiary basis for the claimed fraud in such schemes. Without regard to characterization of DELOREAN's conduct concerning other attorneys, Plaintiffs

It is respectfully submitted that Plaintiffs have failed to adduce sufficient evidence to present for the jury's determination any aspect of the element of a "pattern of racketeering activity." Plaintiffs have failed to present sufficient evidence from which the jury could determine the existence of any predicate act with regard to the various alleged attorney fee schemes. Non-payment to attorneys is not a predicate act; it is not racketeering activity. Plaintiffs' evidence fails to include substantial evidence of the element of mail or wire fraud directed to the attorneys alleged in the so-called attorney schemes.

Moreover, the alleged non-lawyer schemes are not "related" internally or to the lawyer schemes and none of the group of non-MORGANROTH schemes is related to a supposed scheme to defraud MORGANROTH.

Thus, as with the element of an "enterprise", Plaintiffs have failed to produce sufficient credible evidence to allow the RICO claim to proceed to the jury.

D. PLAINTIFFS FAILED TO PRODUCE SUFFICIENT EVIDENCE OF "INJURY TO BUSINESS OR PROPERTY" CAUSED BY VIOLATION OF THE RICO STATUTES

It is clear that the present Plaintiffs cannot recover for supposed injuries or damages occasioned to others. Grantham, supra at p. 606. Thus, even if some legally cognizable injury occurred to others by conduct of the Defendants herein, the

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were aware that such claims and disputes existed and the mere existence of prior controversies regarding attorneys fees was more than adequate to put Plaintiffs on notice and to negate the element of reasonable reliance.

Plaintiffs cannot sustain their RICO claim by demonstration of such injury. Plaintiffs' claim can only be supported by substantial evidence that Plaintiffs were damaged by violation of the RICO statutes.

Supposed injury sustained solely from alleged predicate acts is insufficient to support a RICO cause of action. Grider v. Texas Oil and Gas Corp., 868 F.2d 1147, 1150 (10th Cir. 1989). It is well established in the Sixth Circuit that to have a viable RICO claim, Plaintiffs must have sufficient evidence that they were proximately injured by use or investment of racketeering income in an enterprise. Craighead v. E.F. Hutton, 899 F.2d 485, 494 (6th Cir. 1990); In Re Tucker Freight Lines, 789 F.Supp. 884, 891-892 (W.D. Mich. 1991); Barker v. Underwriters at Lloyd's London, 564 F.Supp. 352, 358 (E.D.Mich. So. Div. 1983).

Therefore, for Plaintiffs to have standing to go to the jury on this claim, Plaintiffs must produce substantial evidence that they were injured in business or property "by the conduct constituting the violation" of the RICO statutes. Sedima, supra at p. 496. This evidence is wholly absent from the record. As demonstrated above, there is no conduct constituting a violation of RICO and therefore there can be no injury proximately caused by such conduct.[7] In the Grantham and Mann case, supra at p.

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[7]To prove injury "by reason of" a violation of RICO, the Plaintiffs must prove injury caused by Defendants operation or management of an enterprise through a pattern of racketeering activity. Reves v. Ernst & Young __ U.S. __, 113 S.Ct. 1163, 1166-1173 (1993). Obviously, if there is no enterprise, there is no operation or management of such fictitious entity and it

606, the Court sustained a directed verdict on a RICO cause of action where the evidence failed to demonstrate a causal connection to damages. In so doing, the Court stated:

> "In addition, even if Grantham had established lost profits as a result of ASP's conduct, it would have still be unable to recover under RICO because that injury would not have been 'by reason of' ASP's fraud. This language of the private civil RICO remedy imposes a causal requirement on Plaintiffs: the criminal conduct in violation of section 1962 must, directly or indirectly, have injured the plaintiff Is business or property. A defendant who violates section 1962 is not liable for treble damages to anyone he might have injured by other conduct, nor is the defendant liable to those who have not been injured." (Citing Haroco Inc. v. American Nat'l Bank and Trust Company, 747 F.2d 384, 398 (7th Cir. 1984) affirmed, 473 U.S. 606 (1985) and Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479 (1985).

On the instant record, Plaintiffs have not produced substantial evidence that they have been damaged in any means or manner by any wrongful conduct of the Defendants, much less that there has been damage to "business or property" by "enterprise" activities controlled and managed by the Defendants or by the Defendants "use or investment" of racketeering income

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cannot engage in a "pattern of racketeering activity."

in an "enterprise".[8] On the present record, Plaintiffs' claims of loss of profits, loss of business and/or loss of income are clearly specious. It is respectfully submitted that there is no substantial evidence from which a reasonable jury could conclude that, in fact, Plaintiffs suffered any such damage as a result of any conduct of the Defendants, much less conduct satisfying the elements of a RICO claim.

Secondly, there simply is no evidence that the Defendants used funds generated by a pattern of racketeering activity in an enterprise in such a manner as to damage the Plaintiffs. Even if the evidence construed most favorably to the Plaintiffs created more than a scintilla that there was a promise to pay attorneys fees to the Plaintiffs, failure to live up to such a promise is not a RICO predicate act and is not an event causing a compensable injury under the RICO statutes. (See DeLorean v. Cork Gully, supra at p. 944).[9]

E. SUMMARY

Plaintiffs lack substantial evidence to support the essential elements of their RICO claim. Wholly lacking from the evidence is an "enterprise", an enterprise engaging in a "pattern of racketeering activity", the commission of the requisite predicate acts and evidence of any injury sustained by Plaintiffs as a direct

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[8]Plaintiff, of course, cannot recover for any alleged injury to others purportedly caused by other racketeering activity.

[9]Such a conclusion with regard to RICO laws is entirely consistent with the substantive law of the State of Michigan as set forth in the accompanying Brief Re: Michigan Law.

and proximate consequence of any violation of the RICO statutes. Absence of any one of these elements compels judgment as a matter of law under Rule 50(A). When taken as a whole, Plaintiffs' evidentiary failure unquestionably mandate judgment as a matter of law in favor of Defendants.

IV. AS A MATTER OF LAW, PLAINTIFFS LACK STANDING TO RECOVER FOR ALLEGED VIOLATIONS OF RICO

Defendants respectfully submit that after presentation of the Plaintiffs' evidence, it is appropriate for the Court to revisit and reconsider the question of whether the Plaintiffs herein have standing to assert the RICO claim.[10] Not only does the evidentiary record preclude presentation of such claims to the jury for its consideration, but further disqualifies the Plaintiffs from pursuing such claims.

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[10]This Honorable Court, during the course of trial, has previously revisited a prior order opining upon the merits of Plaintiffs' case. Prior to trial, the Court enjoined Defendants from transfer of any assets upon concluding that there was a probability that Plaintiffs would succeed at least on portions of their fee claims. After presentation of a substantial portion of Plaintiffs' testimony, the Court, sua sponte, dissolved the restraining order and opined that there did not appear to be a probability that Plaintiffs will prevail on any claim "whatsoever." It is respectfully submitted that it is likewise time to revisit the question of whether Plaintiffs have sufficient evidence to support the RICO claim and whether Plaintiffs have standing to pursue such a claim at all.

The state of the evidentiary record documents precisely why an attorney should be precluded from claiming recovery against a former client under RICO. As demonstrated above, Plaintiffs have wholly failed to present sufficient evidence of any of the elements required to sustain a RICO claim. Nonetheless, Defendants as Plaintiffs' former clients have been subjected to an inordinately lengthy, costly and burdensome trial of what otherwise should have been simple contractual claims; this proceeding gives meaning to the phrase, "making a federal case out of it."[11]

When the abject lack of evidence to support of RICO claim is recognized, then the purpose of such a claim becomes manifest - to intimidate the former client and take undue and inappropriate advantage of the attorney/client relationship. It is clear here that the sole and real purpose of the RICO claim is to extort from Defendant payment of attorneys fees and costs which he does not otherwise owe and which the Plaintiffs cannot otherwise prove. Here, it is obvious that Plaintiffs cannot prove their fee claims standing solely upon the merits and evidentiary basis for such claims. Therefore, Plaintiffs have asserted and pursued the RICO claim in an effort to obscure and obfuscate the lack of merit of their real claims and to distract the jury's

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[11]The judicial system, including this Honorable Court and the jury have likewise been burdened with Plaintiffs pursuit of an unfounded and specious RICO claim.

attention from the lack of merit of such claims by the portrayal of the Defendants as "racketeers."[12]

It is respectfully submitted that the record demonstrates an egregious failure by Plaintiffs in their duties and obligations to the Defendants to make and maintain appropriate and adequate records of alleged services rendered and costs incurred on behalf of their clients. To allow maintenance of a RICO cause of action with its treble damages component premised upon the lawyer's own failures to discharge duties owing to the client, would be to pervert both the ethics and responsibilities of the profession as well as the RICO statutes.

It is respectfully submitted that here, the RICO claim and the attempts to portray the Defendants as "racketeers", members of a racketeering enterprise and as a racketeering influenced corrupt organization are merely smoke screens to hide the realities that the Plaintiffs have wholly failed in their duties and responsibilities to their former clients and wholly failed in their evidentiary presentation to adequately account for and demonstrate their claimed entitlement to attorneys fees and costs.[13]

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[12]This approach, in essence, is a variation of the old saw that when the law and facts are against a litigant, the strategy is to abuse the opponent.

[13]Plaintiffs here seek $5 million dollars or more in attorneys fees and costs without documentary evidence to support, such avarice. Plaintiffs seek an additional $5 million dollars or more in "lost profits" without evidence, documentary or otherwise that any such supposed profits were, in fact, lost. Plaintiffs throughout pretrial stages of litigation consistently claimed

It is respectfully submitted that Plaintiffs seek to accomplish that which the Cannon line of authority and the Rules of Professional Conduct are structured to prevent. While, as discussed below, the Cannon line of authority generally focuses upon the inappropriate use of information obtained during the course of the attorney/client relationship, the actual record before this Honorable Court manifests the additional egregious circumstance that even using the information gained during representation of the Defendant client, the Plaintiffs cannot, in reality, muster sufficient evidence to support a RICO cause of action.

There is no question that an attorneys legal action against former clients must be dismissed if maintenance of such an action violates the attorney's ethical obligations to the former client. Cannon v. U.S. Acoustics Corp., (N.D.Ill. 1975) 398 F.Supp. 209, 228, versed in part, 532 F.2d 1118, 1120 (7th Cir. 1976); Richardson v. Hamilton Int'l Corp., (3rd Cir. 1972) 469 F.2d 1382, 1394-86.

In Cannon I, 398 F.Supp. 209, (N.D.Ill. 1975) attorney Charles B. Cannon and three other individual plaintiffs brought

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entitlement to $31 million dollars plus on the RICO cause of action. (See, Joint Pretrial Order, p. 265). Nonetheless, Plaintiffs heartily object that the jury be so informed. Clearly, the RICO cause of action is a ploy and device aimed not at legitimate redress of RICO wrongs, but rather aimed to intimidate the Defendants, aimed to distract from the meritless nature of Plaintiffs' actual claims and aimed to tar the Defendants with the moniker of "racketeer."

a six-count complaint against two corporations. Attorney Cannon and the other plaintiffs were shareholders in the defendant corporations, and the Six counts in the complaint included derivative shareholder claims as well as personal claims. Attorney Cannon had previously represented the corporate defendants for 12 years in a "multitude" of legal matters. Id. at 227-228. Defendants moved to disqualify Cannon as a party plaintiff based on his prior professional representation of defendants in legal matters substantially related to the action by Cannon and the other plaintiffs against the defendant corporations. The Cannon I court agreed with defendants and disqualified attorney Cannon as a party plaintiff. Id. at 228.

The Cannon I court relied on ABA Code, Canon 4, which states, "A Lawyer Should Preserve the Confidences and Secrets of a Client", and also on Ethical Considerations (EC) 4-4 and 4-5, which follow Canon 4.[14] These provisions of the ABA Code set forth the same client protections and prohibitions

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[14]Michigan Rules of Professional Conduct, Rule 1.6 is to the same effect:

"(b) Except when permitted under paragraph (c), a lawyer shall not knowingly: (1) reveal a confidence or secret of a client; (2) use a confidence or secret of a client to the disadvantage of the client; or (3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(c) A lawyer may reveal: ...(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct."

against attorney disclosure as MRPC 1.6 and 1.9. For example, EC 4-5, states in pertinent part:

> "A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes."

The Cannon I court found that attorney Cannon's legal action against his former clients violated his ethical duty not to use the client's own information against them, because the matters and issues in Cannon's pending action were substantially related to the matters or course of action in Cannon's prior representation of the clients, and because Cannon might have acquired information during the prior representation which was related to the subject matter of his pending action. Cannon I at 223, 228, citing T.C. Theater Corp. v. Warner Bros. Pictures, 113 F.Supp. 265 (S.D.N.Y. 1953). In Canon II, 532 F.2d 1118, the Seventh Circuit affirmed the judgment in Cannon I in all respects except as to Count VI, attorney Cannon's claim for recovery of unpaid legal fees for services provided to defendant corporations during the period of his representation. The net result of Cannon II therefore was a finding that attorney Cannon was appropriately disqualified from acting as a party plaintiff as to those counts of his complaint which threatened ethical violations, but he was allowed to go forward as to his fee claim.[15]

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[15]Plaintiffs use of information obtained during represen-tation of the Defendants is not limited to collection of fees; Plaintiffs seek huge damages well beyond any possible recovery of fees.

In Cannon, the court disqualified attorney Cannon as a party plaintiff as to all claims except his claim for unpaid legal fees because it was clear that in the course of his former representation of defendants he might have acquired information substantially related to his pending suit. In Cannon, there was no claim that Cannon had actually used the client's information against them. The mere possibility that he might do so warranted disqualification.

The result in Cannon reflects the long existent policy that an attorney's ethical duties must be strictly enforced to protect and promote the client's free and open disclosure to the attorney and to avoid the justifiable, "fear that information he reveals to his lawyer on one day may be used against him on the next." Emle Industries Inc. v. Patentex, Inc., 478 F.2d 562, 570-571 (2nd Cir. 1973); Cannon, supra at p. 398 F.Supp. 209, 221, 224. Now that the Plaintiffs here have presented their evidence, the abuse of such ethical duties and the correctness of the Cannon analysis is manifest.

In opposition to Defendants' prior motion for summary judgement which asserted Plaintiffs disqualification to bring a RICO action, Plaintiffs represented to this Court that: "Plaintiffs will prove their RICO and fraud claims with evidence obtained during discovery in this action." (Plaintiffs' Combined Brief in Opposition to Motion for Partial Summary Judgment, p. 27). Further, Plaintiffs represented to this Court that: "Plaintiffs will prove the RICO and fraud claims, not through Defendants 'confidences' or 'secrets' but by calling live witnesses at trial and by introducing deposition testimony and documents acquired

through discovery." The actual presentation, however, of Plaintiffs' case demonstrates substantially the opposite.[16]

Plaintiffs' presentation, has not solely relied upon evidence gleaned by the fruits of discovery. Plaintiffs, to the contrary, have introduced numerous exhibits which clearly came into their possession during the course of representation of Defendant.[17] Not only is Plaintiffs' case replete with documents obtained by Plaintiffs during the course of representation of the Defendants and extracted from Plaintiffs' files, but Plaintiffs attempt to prove various aspects of the RICO

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[16]It should be noted that Plaintiffs pleading of the RICO cause of action came long before any discovery was conducted in this matter. Rule 11 requires that the allegations of Plaintiffs' RICO cause of action be well grounded in fact to the best of the attorneys' knowledge, information and belief. Mr. MORGANROTH's "knowledge, information and belief" upon which the RICO action was pled in the first instance undoubtedly was based upon the information acquired during the course of representing the Defendants herein. Thus, it is disingenuous to assert that the RICO cause of action is premised solely upon the fruits of discovery.

[17]If Plaintiffs' case was truly premised solely upon documents obtained as the product of discovery, then Plaintiffs would be limited only to documents they obtained from others by discovery devices such as documents obtained from DELOREAN, Logan or third parties. It is clearly a disingenuous argument to assert that Plaintiffs' attempt to prove their case by documents attached to discovery depositions when such documents came from the Plaintiffs' files in the first instance.

claim based upon confidential communications between Plaintiffs and Defendant. For example, Plaintiffs' Exhibit 5 is a confidential communication between DELOREAN and MORGANROTH with regard to GPD transaction. Similarly, Exhibits 6 and 14 are communications between Kimmerly and DELOREAN. Thus, in the presentation of this case, Plaintiffs have not limited themselves to "deposition testimony and document acquired through discovery." As indicated, the vast majority of documents presented by Plaintiffs were not "acquired through discovery" but were in fact in Plaintiffs' possession before any discovery was conducted. Moreover, Plaintiffs used such documents in conducting depositions and in formulating the inquiries during discovery.[18]

Not only do Plaintiffs seek to excuse their conduct in violating the requirements of Rule 11 by asserting the substance of attorney/client communications or information received during

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[18]Plaintiffs claim that they would prove the RICO cause of action by presenting "live witnesses" at trial as well as deposition testimony. In fact, Plaintiffs have failed to produce a single live witness regarding the alleged GPD scheme, the alleged McConnell scheme, the alleged Hertzog scheme, the alleged Weinberg scheme, or the alleged creditors scheme. MORGANROTH himself has testified that he had no personal knowledge of the GPD transaction and of course Mr. Schade likewise had no personal knowledge as he did not participate in any of the events. The entirety of Plaintiffs' efforts to prove these various alleged schemes (which efforts have wholly failed) has rested upon documents, knowledge, and/or information obtained by Plaintiffs during the course of their representation of the Defendants.

the course of representation, but it is evident from the record that the entirety of Plaintiffs' case rests upon information gathered during the course of representing the Defendants.[19] It is respectfully submitted that the entirety of Plaintiffs' evidentiary presentation, including the supposed RICO claim, consists of information gathered during the representation of the Defendants. While it is clear that such information does not, in fact, constitute grounds for a RICO cause of action, nonetheless, the entire existence of such cause of action and its presentation in this trial proceeding derives from Plaintiffs attempt to use information gleaned and gathered during the course of the attorney/ client relationship.[20] In fact, on the record before the Court, it is established that a substantial portion of Plaintiff's education in the area or RICO law was garnered, or should have been, during the course of Plaintiffs representation of Defendants in the DeLorean v. Cork Gully case.[21]

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[19]As the court no doubt recalls, Mr. MORGANROTH on multiple occasions attributes his own conduct to information, direction or other input received from his clients. Mr. MORGANROTH continually excused his aversion to adherence with Rule 11 to supposed conformance with the wishes of his clients.

[20]It should be noted that even though Defendant DELOREAN was sued for attorneys fees by the Wyman, Bautzer law firm, said firm did not pursue any action for fraud or for contended RICO violations; only Plaintiffs here make such contentions.

[21]It is ironic that the one lesson learned and/or information gathered during the representation of Defendants that Plaintiffs

While abuse of the attorney/client relationship is not to be promoted in any context, such abuse is even less tolerable when manifested by claims of RICO violations. Such claims are inherently coercive on the defendant and burdensome on the judicial system. In Pelletier v. Zweifel, 921 F.2d 1465, 1522 (11th Cir. 1991), the Court stated:

> "At a time when the federal courts - which are a scarce dispute resolution resource, indeed -are strained under the pressure of an ever increasing case load, we simply cannot tolerate this type of litigation. Particularly with regard to civil RICO claims, plaintiffs must stop and think before filing them. If used correctly, the civil RICO provisions may have many salutary effects. When used improperly, as in this case, those provisions allow a complainant to shakedown his opponent and, given the expense of defending a RICO charge, to extort a settlement. Such improper use of the civil RICO provisions comes at the expense of the federal judiciary and those who need ready access to the courts."

It is respectfully submitted that to allow an attorney standing to pursue a RICO cause of action against a former client is an untenable and unjustifiable abuse of the attorney/client relationship and is not necessary for legitimate purposes of

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could legitimately put to use - that specious and unfounded RICO claims will not be countenanced by the Courts - Plaintiffs chose to ignore.

recovery of attorneys fees.[22] It is further respectfully submitted that such a proceeding is an abuse of the judicial system and certainly an abuse of the public policy and legislative intents behind creation of the RICO statutes.

Upon the record before the Court, the abuse here is egregious. The Plaintiffs here have wholly failed to adequately record, maintain and document the components of their representation of Defendants. Plaintiffs have no written fee contracts, no letters of engagement, no letters confirming employment terms and conditions and no documentary support for the outrageous fee claims made. Moreover, Plaintiffs failed to adequately account for payments made. Plaintiffs make outlandish contentions regarding the number of hours worked per week in face of the evidence of numerous other ongoing litigations and obligations existing at the same time. In total, the evidence regarding Plaintiffs' contractual fee claims is manifestly unpersuasive and lacking in substance in every respect. Judge Zatkoff described the RICO claims pled by Plaintiffs in the Cork

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[22]Litigation between an attorney and client: "... does not entitle the attorney to rummage through every file he has on that particular client (regardless of its relatedness to the subject matter of the present case) and to publicize any confidential communication he comes across which may tend to impeach his former client. At the very least, the word 'necessary' in the disciplinary rule requires that the probative value of the disclosed material be great enough to outweigh the potential damage the disclosure will cause to the client and to the legal profession." [Footnotes omitted]. Levin v. Ripple Twist Mills, Inc., 416 F.Supp. 876, 886-887 (E.D.Pa. 1976).

Gully matter as "specious" and as having "absolutely no merit." Such description aptly applies here. It is therefore evident that the employment of a RICO cause of action seeks to divert the Court and jury's energy and attentions from the infirmities of Plaintiffs' common law claims in the hope that calling the Defendants "racketeers" often enough will carry the day.

V. CONCLUSION

The parallels between the case presented by the Plaintiffs herein and the one alleged by Plaintiffs on behalf of the Defendants in DeLorean v. Cork Gully are striking. Judge Zatkoff in the Cork Gully case found it inconceivable that reliance could be premised upon the representations of one's adversary. (Cork Gully, supra at p. 943). Likewise, it is inconceivable here that reasonable reliance can be established by the Plaintiffs given their knowledge gleaned from and their participation in the representation of the Defendants.

Judge Zatkoff described the Cork Gully RICO claims as "specious" and as having "absolutely no merit." After full presentation of Plaintiffs' evidence, the same conclusion results regarding the RICO claims asserted here.

Judge Zatkoff found the RICO claims asserted in Cork Gully to be wholly lacking any basis for demonstrating an actionable RICO injury separate and apart from the alleged racketeering acts. Cork Gully , supra at p. 945-946. Absent such proximately caused injury separate and apart from any supposed injury occasioned by the predicate acts themselves, no RICO claim could exist in Cork Gully. Likewise here, no RICO injury exists separate from the alleged racketeering acts which themselves have not been adequately evidenced.

In the Cork Gully case, Mr. MORGANROTH could not get the matter to a jury. While acting on his own behalf here, he has survived longer, Mr. MORGANROTH and his RICO cause of action are no nearer the goal here than in the Cork Gully case. This Honorable Court, having afforded Plaintiffs a full and complete opportunity to evidence their RICO claims, should, like Judge Zatkoff in Cork Gully, bring an end to such specious and absolutely unmeritorious litigation.

DATED: December 2, 1994

Respectfully Submitted,

FREIDBERG LAW CORPORATION

BY /s/Edward Freidberg
EDWARD FREIDBERG
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77 Cadillac Drive, Suite 240
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APPENDIX J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Amended Judgment

District Court Case №. 93-CV-70848
Filed February 6, 1995

Pages J-1 thru J-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**- Filed**
(formerly known as	)	**Feb. 6, 1995**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

AMENDED JUDGEMENT

This matter having been tried to a Jury, and the Jury having rendered its verdict on all claims and defenses on January 4, 1995, and the court being fully advised,

IT IS HEREBY ORDERED that Judgment be and hereby is entered as follows:

1. On Count I of plaintiff's complaint a claim for violation of 18 U.S.C. §1962-(a), (b) and (c), a Judgment of no cause for action.

2. On Count II of plaintiffs' complaint, plaintiffs, fraud claims, Judgment for plaintiffs and against both defendants.

3. On Counts III and IV of plaintiffs' complaint, for Breach of Express contract, Judgment for plaintiffs against both defendants.

4. On Counts V and VI, for Breach of Implied contract, the Jury made no finding because it found liability on an express contract. A Judgment of dismissal for mootness shall enter.

5. On Counts VII and VIII, for account stated, Judgment for plaintiffs against both defendants.

6. On Counts IX and X, for quantum meruit, the Jury made no finding because it found liability on an express contract against both defendants. That claim is adjudged moot and dismissed.

7. On Counts XI and XII, for unjust enrichment, the Jury made no finding because of liability found on an express contract against both defendants. A Judgment of dismissal for mootness shall enter.

8. In accordance with the Jury's findings of liability, denoted above, and its damage awards based upon those findings,

NOW, THEREFORE, JUDGEMENT for plaintiffs in the following sums is hereby entered.

a. $3,427,905.00 for fees and expenses due, against defendant John Z. Delorean, individually.

b. $1,311,989.00 for fees and expenses due, against defendant Ecclesiastes and defendant Delorean, jointly and severally.

c. $600,000.00 for lost business and income other than stated above, against defendant John Z. Delorean, individually.

d. $5,000,000.00 for punitive damages against defendant John Z. Delorean, individually.

e. Interest, in an amount to be determined and awarded on adjudication of plaintiffs post-judgment motion therefor, which is ordered to be filed, with the supporting brief, within 10 days of date hereof.

SO ORDERED.

/s/ Anna Diggs Taylor
United States District Judge

APPENDIX K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Defendants' Notice of Motion and Motion For New Trial, and Motion to Alter or Amend A Judgment, and Motion for Relief From Judgment,

District Court Case №. 93-CV-70848
Filed February 10, 1995

Pages K-1 thru K-25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGANROTH & MORGANROTH,	)	
a Michigan General Partnership	)	
and MAYER MORGANROTH,	)	
Plaintiffs,	)	
	)	**Case No. 93-CV-70848**
v.	)	
	)	
JOHN Z. DELOREAN and	)	
ECCLESIASTES 9:10-11-12, INC.,	)	
a Delaware Corporation	)	**Filed**
(formerly known as	)	**Feb. 10, 1995**
Logan Manufacturing),	)	**Clerk,**
Jointly and Severally,	)	**East Dist Mich**
Defendants.	)	

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR NEW TRIAL, AND MOTION TO ALTER OR AMEND A JUDGMENT, AND MOTION FOR RELIEF FROM JUDGMENT

Defendants, JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC. hereby move for an order granting a new trial in the above-captioned action, and hereby move for an order amending the judgment entered in the above-captioned action, and hereby move for an order relieving Defendants from the judgment entered in the above captioned action. Defendants bring the instant motions pursuant to FRCP 59(a) and (e), and 60(b)(3) and (b)(6).

The grounds for the instant motions include, but are not limited to the following: Plaintiffs' baseless RICO claim exposed

the jury to extremely prejudicial, inflammatory and inadmissible bad character evidence such that the jury's verdict was influenced by such evidence and based on passion and prejudice against Defendants and not on the merits of the claims; the jury's award of $5 million punitive damages to punish Defendants constitutes plain error under Michigan law; there is no factual or legal basis whatsoever for the jury's award of $600,000.00 for loss of business and income; the jury's finding of liability based on the account stated claims is inconsistent with the damage award and indicates either confusion or abuse by the jury because there was no evidence that the amounts awarded against Defendants ($3,427,905.00 - DeLorean, $1,311,985.00 - Ecclesiastes) were amounts that were ever "stated" agreed upon between the parties; and such other grounds as are set forth in the supporting brief filed concurrently herewith.

The instant motions shall be heard at the discretion of and on a date and time to be designated by this Honorable Court.

DATED: February 9, 1995

Respectfully Submitted,

Respectfully Submitted,

FREIDBERG LAW CORP.

By /s/ Daniel Boone
DANIEL BOONE
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DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL AND MOTION TO ALTER OR AMEND A JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT

I. INTRODUCTION

Plaintiff MAYER MORGANROTH testified at the trial of this action that when he discovered FBI lies in the government's prosecution of Defendant DELOREAN during the 1986 Detroit trial, he knew that telling the jury about those lies was the "hook" that could win the case. He was right. Once informed of the FBI's perfidy, the jury acquitted DELOREAN.

Plaintiff MORGANROTH conjured a similar "hook" to win this case. Pursuing a virtually impossible fee claim case without time sheets or documents to prove his inflated claims, Plaintiff MORGANROTH hit upon the "hook" of RICO. Through RICO he could inundate the jury with months of inflammatory "bad character" evidence otherwise inadmissible under FRE 404 (a) and (b), drowning out Defendants' legal malpractice and recoupment claims and distracting the jury from the blatant and transparent weaknesses in his unsupported and undocumented fee claims. MORGANROTH was right again.

As the 1986 jury hated the FBI and acquitted DELOREAN, so did the jury in this case hate DELOREAN and awarded Plaintiffs $10.3 million including $5 million punitive damages to "punish" DELOREAN. Bad character evidence is mighty powerful poison indeed.[1]

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[1]Bad character evidence is excluded because "it is said to weigh too much with the jury" such that they deny the Defendant a fair opportunity to defend himself. Michelson v. United States,

This Court should issue an order granting a new trial or granting Defendants relief from the judgment because this Court erred by not granting Defendants' various motions to dismiss the sham RICO claim. Those errors allowed inadmissible bad character evidence to poison every day of trial and every aspect of the jury verdict resulting in a gross miscarriage of justice and depriving Defendants of their fundamental right to a fair trial.

In the alternative, this Court should issue an order amending the judgment to strike the $5 million punitive damages because punitive damages are not recoverable under long-established Michigan law.

This Court should also issue an order amending the judgment to strike the $600,000.00 award for loss of business and income because that award has no legal basis nor any factual basis in any credible evidence presented at trial.

This Court should also issue an order amending the judgment to strike the finding of liability on the account stated claims because the jury verdict is inconsistent and shows jury bias.

II. FACTS

Plaintiffs commenced this action in February 1993 by filing a Complaint alleging 12 causes of action including a RICO claim. On numerous occasions during this litigation, Defendants warned this Court that Plaintiffs' RICO claim was a sham included in the lawsuit for the sole purpose of bringing extremely inflammatory, prejudicial, and otherwise inadmissible bad character evidence before the jury. (Exhs. "N" at pp. 5-6, "O" at

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335 U.S. 469, 475-476 (1948).

pp. 2-5, "E" at pp. 32:2-6, 33:2-6, 34:24-35:10 [All referenced Exhibits are attached hereto]).

Before trial, Defendants formally challenged Plaintiffs' RICO claim twice, bringing a FRCP Rule 12 (b) (6) motion and a motion for summary judgment against the RICO claim in which Defendants pointed out that Plaintiffs had not offered a scintilla of admissible evidence to establish the elements of the RICO enterprise, separateness, relatedness of the RICO predicate acts, and a host of other blatant deficiencies. (Exh. "E" at 45:17-48:15, 54:24-56:10). Plaintiffs opposed these motions with little more than their own insistence that they had a bona fide RICO case which they would prove at trial. (Exh. "F", pp. 48-54). This Honorable Court relied upon Plaintiffs' representations, not any proposed evidence, and erroneously denied the motion for summary judgment on RICO and allowed the extremely prejudicial racketeering claim to dominate the trial. Defendants also moved for separate trial of the RICO claim to avoid spillover prejudice on the other claims, but that motion was also denied. (Exh. "E" at pp. 30-37, Exhs. "N" and "O").

At trial, Plaintiffs wasted no time fomenting the jury's prejudice and hatred toward DELOREAN, spending most of the opening statement trumpeting alleged bad acts by Defendant DELOREAN which were related only to Plaintiffs' sham RICO claim.[2] In that opening, Plaintiffs accused Defendant DELOREAN of stealing $20 million from his car company, forgery, doing business with organized crime, hiding assets from

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[2]Mr. MORGANROTH's Opening Statement covers 61 pages of the transcribed record, of which 37 pages include discussion of the RICO claim. (Exhibit G, pp. 3-64).

creditors, money laundering, fraudulently failing to pay other attorneys who had performed legal services for him, and other "evil" acts. (Exh. "G", pp. 3-64).

The "evil DeLorean" theme introduced in opening statement was relentlessly pounded into the jury for three months during the presentation of Plaintiffs' evidence. This evidence included (but was by no means limited to) testimony by attorney Tom Kimmerly that DELOREAN owed him $3 million and never paid him, deposition testimony from Cristina Thomopolous accusing Defendant DELOREAN of various bad acts (including forgery) during the course of their marriage,[3] testimony by attorney Howard Weitzman about various bad acts allegedly committed by Defendant DELOREAN,[4] dozens of documentary exhibits purporting to establish DELOREAN's links to organized crime and other evil persons and activities (Exhibit "B" hereto), evidence that DELOREAN fraudulently canceled the Logan retirement plan (Exh. "M", p. 7), dozens of stipulated facts relating to the RICO claim (Exh. "A" - Stipulation of Facts) , MAYER MORGANROTH's voluminous testimony about various alleged bad acts by Defendant DELOREAN, and 813 pages of deposition testimony by Defendant DELOREAN, of which 345

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[3]Defendants objected to this testimony on spousal/marital privilege grounds, but these objections were erroneously overruled by this Honorable Court.

[4]Defendants objected to this testimony on attorney/client privilege grounds, but these objections were erroneously overruled by this Honorable Court.

pages (42%) focused on the alleged RICO bad man/bad acts evidence. (Exh. "M")[5] [6]

While Plaintiffs poisoned the jury with "evil DeLorean" Defendants offered clear evidence that Plaintiff MORGANROTH perjured himself when he testified that his net income for the years 1978-1981 was $1.5 million to $2 million per year. (Exh. "H" at p. 64). Defendants presented evidence that in National Advertising Company v. Mayer Morganroth, et al., MORGANROTH testified at a Judgment Creditor's Exam and in related proceedings that he owned no assets and maintained no bank account (Exh. "I", ¶4), because the monies he was taking in through his business were less than his expenses. (Exh. "J", ¶6). Defendants also presented evidence showing that Mr. MORGANROTH had default judgments taken against him during that same time because he could not make the most minimal payments on debts and loans that he owed.

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[5]Exhibit "M" summarizes the RICO excerpts read to the jury from DELOREAN's deposition.

[6]Most of the RICO bad character evidence was manufactured from confidential information gained by the attorney Plaintiffs when they represented Defendants, and was presented in violation of ethical rules and principles set forth in cases such as Cannon v. U.S. Acoustics Corp., 398 F.Supp. 209 (N.D.Ill. 1975), rev'd in part, 532 F.2d 1118 (7th Cir. 1976), and Richardson v. Hamilton Int'l Corp., 469 F.2d 1382 (3rd Cir. 1972), as pointed out in motions by Defendants against the RICO claims, erroneously denied by this Court.

MORGANROTH's perjury was highlighted when he first testified that his IRS records would help prove his claimed earnings, but then refused to sign a form to allow Defendants to obtain the records and present them as evidence. (Exh. "C").

On the day that MAYER MORGANROTH refused the tax records, this Court dissolved a previous restraining order, stating in pertinent part, "Apparently, the fee contract on which the plaintiff relies on is an oral one totally, and after there has been two months of testimony, I don't find the testimony credible by a preponderance. ...the case obviously hinges on the plaintiff's testimony." (Exh. "D"). But this obvious perjury by Mr. MORGANROTH was ignored by the jury. Blinded by the exhausting glare of "evil DeLorean" evidence, they fell for Mr. MORGANROTH's incredible 19,000 hour unsupported billings and the equally incredible tale of conversion of the meritless Cork Gully case from contingency to hourly after summary judgment had been granted against it, and they gave Plaintiffs virtually everything they asked for.

At the close of Plaintiffs' case in chief Defendants moved for judgment on the RICO claim, pointing out again as they had throughout the litigation that Plaintiffs utterly failed to present evidence of a RICO enterprise, and other shortcomings in Plaintiffs' RICO case. This Court erred and denied the motion without opportunity for oral argument and sent the RICO claim to the jury, stating at that time that any problem with the RICO claim could be corrected after the verdict by post-trial motion.[7]

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[7]Even though the bad character evidence was all in and the jury completely prejudiced at this point, granting judgment against the RICO claim would have at least allowed a strongly

Plaintiffs' RICO pretense finally dissolved completely in closing arguments. The RICO evidence had accomplished its purpose. The jury was completely prejudiced against Defendants by months of bad character evidence, so Plaintiffs blatantly abandoned their RICO claim. In the three and a half hour closing, Plaintiffs' counsel Ellen Nadler spent less than one minute on RICO, offering no analysis of the evidence or the law, but stating in the most conclusory fashion possible that the Defendants acted together as an enterprise, that the victims of these acts were lawyers, and that Plaintiffs are two of the victims of these acts. After a careful and detailed analysis of the fatal deficiencies of the RICO claim during Defendants' closing,[8]

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worded jury instruction to disregard the RICO evidence and focus only on the evidence relevant to the other claims. Denial of Defendants' Rule 50 motion, and allowing the RICO claim to go to the jury also implied to the jury that the RICO claim had some merit, because the jury was aware at this point in trial that a meritless RICO claim had been dismissed in the Cork Gully case.

[8]Defendants showed that neither DELOREAN nor LOGAN nor DELOREAN and LOGAN together can form the enterprise for several reasons. First, RICO requires that the defendant be associated with or employed by the enterprise, but you obviously can't be associated with or employed by yourself. Second, there was not a shred of evidence at trial that DELOREAN was employed by anyone but only that he acted on his own behalf. Nor was there any evidence that there was an ongoing organization which is required to prove a RICO enterprise. Nor can LOGAN be the enterprise. As the jury was instructed in jury instruction #54, the Plaintiffs had to prove the existence of an

Plaintiffs' counsel MAYER MORGANROTH spent approximately ten seconds on RICO in his final closing, stating simply that he believed that DELOREAN and LOGAN could be an enterprise. Plaintiffs thus had no rebuttal to Defendants' close when Defendants pointed out, just as they had in their Rule 12 (b)(6) motion, summary judgment motion, separate trial motion,

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enterprise distinct from the Defendant corporation (LOGAN). Nor did Plaintiffs at trial establish any nexus between any racketeering acts and any enterprise. The only alleged mail fraud/wire fraud involving Defendants occurred from December 1990 to February 1993 when DELOREAN kept MORGANROTH working without paying him. There was not a shred of evidence at trial that DELOREAN was employed by or associated with anyone at the time. He was acting on his own and as an officer of LOGAN. A corporation acts only through its officers and agents, so anything DELOREAN did while running LOGAN was the business of the corporation and not part of an enterprise, because the enterprise has to be separate and distinct from the corporation. If DELOREAN and/or LOGAN defrauded MORGANROTH by not paying his billings to them, those actions are taken for DELOREAN individually and for LOGAN as a corporation and there is no nexus to any enterprise. Further, injury arising from the racketeering acts themselves (such as mail fraud or wire fraud) is not compensable under RICO, only injury caused by the enterprise's activities. Because Plaintiffs at trial never established the existence of any RICO enterprise, they failed to show any injury caused by the activities of an enterprise. They may have been injured by DELOREAN or LOGAN committing mail fraud or wire fraud, but not by any activity with or by an enterprise.

and Rule 50 motion (all erroneously denied by this Court) that there was absolutely no evidence of any RICO enterprise or other key RICO elements.

But it didn't end there. The RICO claim also dominated and distorted the jury instructions. Of the 158 jury instructions read to the jury, 71 addressed RICO.

After months of immersion in the "evil DeLorean" theme and RICO bad character evidence, the jury returned a verdict which broadcast their passion and prejudice against Defendants loud and clear: $5 million in punitive damages to punish Defendants, $4.7 million compensatory damages, and $600,000 for lost business and income, with defendant DELOREAN responsible for the entire $10.3 million amount.

In short, the jury gave Plaintiffs virtually everything they asked for even though, as this Court observed when dissolving the restraining order, the merits of Plaintiffs' case depended on the testimony of Plaintiff MAYER MORGANROTH. That testimony had been clearly shown at trial to be false and not credible. The only possible explanation for such an extreme verdict, ignoring Plaintiff MORGANROTH's blatantly false testimony at trial, is bias and prejudice created by the inflammatory RICO bad character evidence.

III. LEGAL ARGUMENT

A. DEFENDANTS ARE ENTITLED TO A NEW TRIAL BECAUSE THE INADMISSIBLE BAD CHARACTER EVIDENCE ERRONEOUSLY ADMITTED BY THIS COURT SUBSTANTIALLY INFLUENCED THE JURY AND THE VERDICT

FRCP Rule 59(a) authorizes a court to grant a new trial "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States". A court has a right and duty to order a new trial if such order will be in the interest of justice. Simpson v. Skelly Oil Co., 371 F.2d 563, 567 (8th Cir. 1967). North Texas Producers Ass'n v. Metzger Dairies, Inc., 348 F.2d 189, 193 (5th Cir. 1965), cert. denied 382 U.S. 977. One ground for a new trial is substantial error in the admission or rejection of evidence. Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 251 (1940).

Plaintiffs challenged the RICO claim in this litigation through a Rule 12 (b)(6) motion, a summary judgment motion, a motion for separate trials, and a Rule 50 motion at the close of Plaintiffs' evidence at trial. This Court erroneously denied each of those motions. Denial of the pretrial motions brought the RICO claim to trial with all the other claims, instigating further error by this Court by admitting otherwise inadmissible bad character evidence which was relevant only to the sham RICO claim. Denial of the Rule 50 motion at trial denied Defendants even a curative jury instruction which might have offset the tremendous prejudice created by the inadmissible character evidence and implied to the jury that the RICO claim had some merit. (See footnote 7, supra.)

Courts have recognized that by its very nature, a RICO racketeering claim carries a tremendous danger of creating guilt by association and creating prejudice which can spill over to other claims. U.S. v. Bledsoe, 674 F.2d 647, 664 (8th Cir. 1982). U.S. v. Griffin, 660 F.2d 996, 1000 (4th Cir. 1981). U.S. v. Flynn, 852 F.2d 1045, 1054 (8th Cir. 1988). Totaltape, Inc. v. Nat'l Assn. of State Boards of Accountancy, et al., 1987 Westlaw 7736, p. 8 (S.D.N.Y. 1987). Duttle v. Bandler & Kass, 1990 Westlaw 113187, p. 7 (S.D.N.Y. 1990).

The Supreme Court has also warned against the dangers of inflammatory bad character evidence:

> The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.

[Internal footnotes excluded.] Michelson v. United States, 335 U.S. 469, 475-476 (1948).

As recounted in detail in the FACTS section supra, Plaintiffs poisoned this jury with RICO bad character evidence from opening statement through 3-1/2 months of trial, then virtually abandoned their sham RICO claim in closing argument, thereby finally admitting what Defendants had warned all along: that they had no real RICO claim at all.

FRE 404 would have barred this noxious flood of inflammatory evidence, but for this Court's errors (induced by Plaintiffs' representations) which allowed the bogus RICO claim to come to trial. Plaintiffs thus sabotaged this Court and the fundamental principles of evidence law by bringing in otherwise

inadmissible character evidence under the guise of RICO so the jury would award them money based on passion and prejudice and ignore the weakness of their case.

And it worked. Consumed by their RICO-induced prejudice against DELOREAN, the jury returned a verdict so extreme it can only be based on passion and prejudice.[9]

The $4.7 million for unpaid fees and costs awards Plaintiffs virtually everything they asked for, in spite of the fact that Plaintiff MAYER MORGANROTH was impeached continually during cross-examination on his shoddy and wholly unreliable billing records and billing practices, destroying time sheets, destroying records, failing to credit payments that were made, outrageously unbelievable testimony that he worked from 8:00 in the morning until 2:00 the following morning every day, seven days a week, that he was working 90% of his time for DELOREAN at the same time he was conducting months-long trials and working for numerous other clients on numerous other matters scattered all over the country, and his false testimony about his earnings in the period 1978 to 1982.

But the jury, blinded by their prejudice against "evil DeLorean", ignored the clear evidence of Plaintiff MORGANROTH's false testimony, bought his incredibly inflated claims hook, line and sinker and awarded Plaintiffs $4.7 million, plus $600,000.00 for loss of business and income which has no

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[9]A court may grant a motion for new trial when the verdict is the result of passion, bias or prejudice. Minneapolis, St. Paul and Sault Ste. Marie Rv. Co. v. Moguin, 283 U.S. 520, 521 (1931). Farber v. Massillon Board of Education, 917 F.2d 1391, 1395 (6th Cir. 1990).

legal basis and no basis in the evidence whatsoever. (See Subsection D. hereinbelow.) It is clear that this jury, twisting on Plaintiffs' RICO "hook", seized every opportunity to make DELOREAN pay and thus awarded these wholly unsupported damages for loss of business and income.

This jury verdict is an outrageous miscarriage of justice. The jury found no liability on the RICO claim, confirming Plaintiffs' virtual concession in closing argument that there never was a bona fide RICO case. But the jury found liability on the fraud claim, the breach of express contract claims and the account stated claims. Given the overwhelming quantity and vicious quality of the prejudicial bad character evidence dumped on the jury for days and weeks and months at trial, it is impossible to believe that the verdict was not influenced by the prejudicial bad evidence. The RICO bad character evidence offered an emotional element that was otherwise lacking as a basis for the verdict finding liability on the other claims. Schrand v. Federal Pacific Elec.Co., 851 F.2d 152, 156 (6th Cir. 1988). There can be no doubt that the bad character evidence confused the issues in the case by focusing the jury's attention on the bad character of "evil DeLorean" rather than on the merits of Plaintiffs' claims.

Defendants' fundamental right to a fair trial was violated by Plaintiffs' coniving manipulation of the RICO statute to avoid the strictures of FRE 404 and bring otherwise inadmissible evidence before the jury. This Court should now prevent a miscarriage of justice and serve the interests of justice by granting Defendants a new trial on the fraud, breach of contract and account stated claims, so that those claims can be tried openly and fairly and determined on their merits free from the

unfair prejudice engendered by the RICO bad character evidence.[10]

Nor can it be argued that presentation of this inflammatory and hateful bad character evidence was "harmless" or did not affect Defendants' "substantial rights". 28 U.S.C. §2111. FRCP 61. As the Supreme Court has stated the test:

> But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence.

Kotteakos v. United States, 328 U.S. 750, 765 (1945).

As the Sixth Circuit has stated the test:

> Counsel should not introduce extraneous matter before a jury or, by questions or remarks, endeavor to, bring before it unrelated subjects, and, where there is a reasonable probability that the verdict of a jury has been influenced by such conduct, it should be set aside.

Twachtman v. Connelly, 106 F.2d 501, 508-509 (6th Cir. 1939). See also City of Cleveland v.

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[10]It will also serve the broader interests of justice to prevent parties from eviscerating FRE 404 by misusing the RICO statute.

Peter Kiewit Sons I Co., 624 F. 2d 749, 756 (6th Cir. 1980).

The RICO bad character evidence invaded and infected and poisoned every phase and aspect of this case at trial. It is therefore impossible to conclude that the jury verdict was not substantially influenced by this evidence or that substantial rights were not affected by its presence. Applying the Sixth Circuit standard, there is certainly at least a "reasonable probability" that the jury's verdict has been influenced by the presentation of this bad evidence. The verdict must therefore be set aside, and a new trial granted for the fraud claim, breach of express contract claims and the account stated claims.

B. DEFENDANTS ARE ENTITLED TO RELIEF FROM UDGMENT UNDER FRCP 60 (b) (3) AND (b) (6) BECAUSE PLAINTIFFS COMMITTED FRAUD UPON THE COURT BY MISREPRESENTING THAT THEY HAD A BONA FIDE RICO CLAIM THAT THEY WOULD PROVE AT TRIAL

FRCP 60(b)(3) and (b)(6) authorizes this Honorable Court to relieve Defendants from a judgment based on fraud, misrepresentation, or other misconduct of an adverse party, or for "any other reason justifying relief from the operation of the judgment."

Plaintiffs perpetrated a fraud upon this Court and upon Defendants by misrepresenting numerous times during the course of this litigation that they had a legitimate RICO claim that they would prove at trial. (Exh. "F" at p. 7, "E" at pp. 48-54). Plaintiffs' sham RICO claim survived a FRCP 12(b)(6) motion and a Rule 56 motion for summary judgment based on little more

than Plaintiffs fervent representations that they had evidence to back up their RICO claim which they would present at trial. In a pretrial motion for separate trials, Defendants warned that the RICO claim and bad character evidence would overpower and prejudice the jury in their determination of Plaintiffs' other claims, but Plaintiffs' misrepresentations regarding the merits of their RICO claims carried the day. (Exh. "E", pp. 30-44).

Plaintiffs' representations that they had a bona fide RICO claim which they would prove at trial were of course false.[11] They knew their RICO claim was a sham pretext for inundating the jury with inflammatory bad character evidence, and they tacitly confirmed the sham when they virtually abandoned the RICO claim at closing, after the hook was set and the damage was done.

Defendants strongly challenged the validity of the RICO claim at the hearing on the motion for summary judgment, begging this Court to take the necessary time to look behind Plaintiffs' conclusory claims that they had a RICO case and carefully evaluate whether there was actually any evidence that might establish a RICO enterprise, a pattern of racketeering acts and other RICO elements. This Court instead relied upon Plaintiffs' fraudulent representations and allowed the RICO claim to come to trial. (Exh. "E", pp. 45-57).

Pursuant to FRCP 60(b)(3), this Court should now relieve Defendants from the judgment in this action based on the fraud, misrepresentation and misconduct by Plaintiffs.

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[11]See footnote 8 supra.

C. DEFENDANTS ARE ENTITLED TO HAVE THE JUDGMENT AMENDED TO STRIKE THE AWARD OF $5 MILLION PUNITIVE DAMAGES AS CONTRARY TO CLEAR AND LONG-ESTABLISHED MICHIGAN LAW

FRCP 59(e) authorizes this Court to alter or amend the judgment in this action. A judgment may be altered or amended to correct any error called to the court's attention regarding the judgment, or to prevent manifest injustice. Continental Casualty Co. v. American Fidelity and Casualty Co., 186 F.Supp. 173, 178-179 (S.D.Ill. 1959). U.S. Taylor, 1994 U.S.Dist. LEXIS 917, p. 1 (W.D.Mich. 1994). "A substantial and prejudicial error in a single jury instruction may warrant reversal." Clarksville-Montgomery Cty. Sch. S. v. U.S. Gypsum, 925 F.2d 993, 1003 (6th Cir. 1991).

The judgment must be amended to strike the $5 million punitive damages award which the jury erroneously awarded to punish Defendants, as they were erroneously instructed to do by jury instruction 137 offered by Plaintiffs. (Exh. "L", p. 137). Such punitive/punishment damages cannot be awarded under Michigan law dating back to at least 1886. Ross v. Leggett, 61 Mich. 445, 28 N.W. 695 (1886). Thompson v. Paasche, 950 F.2d 306, 314 (6th Cir. 1991).

Under Michigan and Sixth Circuit law, as explained in Thompson v. Paasche, instructing a jury that it can award punitive damages to punish a defendant is such an egregious error that the award must be reversed even if the defendant failed to object to the instruction.

> Initially, the plaintiffs were awarded punitive damages. The jury had been instructed that it

> could award punitive damages, and Paasche failed to object to this instruction. Under Michigan law, however, punitive or exemplary damages cannot be awarded where actual damages are sufficient to make the plaintiff whole. Hayes Albion v. Kuberski, 421 Mich. 170, 364 N.W.2d 609, 617 (1984). Moreover, awarding such damages constitutes 'plain error.' Jackson Printing Co., Inc. v. Mitan, 169 Mich.App. 334, 425 N.W.2d 791, 794 (1988). After the verdict had been rendered, Paasche moved for the district court to strike the punitive damages, and the court did so. Rule 51 of the Federal Rules of Civil Procedure would, on its face, seem to preclude a party from objecting after the fact to a jury instruction after acquiescing by failing to object before the fact. Nonetheless, we have long recognized an exception for 'plain error'. See, e.g., Ivey v. Wilson, 832 F.2d 950, 955 (6th Cir. 1987); Gomez v. Great Lakes Steel Division, National Steel Corporation, 803 F.2d 250, 257 (6th Cir. 1986). We have done so, we might add, with the blessing of the Supreme Court. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 256, 101 S.Ct. 2748, 2754, 69 L.Ed.2d 616 (1981).

Thompson at 314.

Nor can Plaintiffs credibly contend that the "punitive" damages awarded by the jury are really "exemplary" damages

with the wrong name. In Michigan, exemplary damages cannot be awarded to punish the defendant, but only to compensate plaintiff for humiliation, outrage and indignity (mental distress). Kewin v. Mass. Mut. Life Ins. Co., 409 Mich. 401, 295 N.W.2d 50, 55 (1980). But there was no jury instruction about awarding exemplary damages for mental distress, and Plaintiffs put on no evidence of any mental distress.

Michigan law clearly does not permit an award of punitive or exemplary damages to punish a defendant. The jury pursuant to jury instruction 137 clearly awarded $5 million to punish Defendant DeLorean. Pursuant to FRCP 59 (e) , this Court must amend the judgment to strike the $5 million punitive damages.

D. DEFENDANTS ARE ENTITLED TO HAVE THE JUDGMENT AMENDED TO STRIKE THE AWARD OF $600,000 FOR LOSS OF BUSINESS AND INCOME AS WHOLLY UNSUPPORTED BY LAW OR EVIDENCE

In this case, the jury awarded Plaintiffs $600,000.00 for loss of business and income. This Court should amend the judgment to strike this award as wholly unsupported by law or evidence.

Plaintiffs had an express agreement with Defendants by which Plaintiffs would provide legal services and Defendants would pay. Plaintiffs have now received the benefit of their bargain and been paid for their services under that agreement: the $4.7 million judgment. On the breach of contract involved in this case, the loss caused by the failure to pay can only be the amount Defendants agreed to pay, not additional lost business or

income. The loss of business and income therefore cannot be awarded on the breach of contract claims.

By definition, a loss of business and income cannot possibly be awarded on the basis of an account stated claim. Such amount of damages, if any, could never be "stated" and agreed upon by the parties as part of an account.

Nor can these damages be based on the fraud claim, since there was no evidence presented at trial to support any claim of lost business and income from February 3, 1993 (when Plaintiffs ceased working for Defendants) to the date of the verdict, which is the only time period during which this purported loss of business and income could have occurred since Plaintiffs have already been compensated for the benefit of their bargain up to February 3, 1993 by the $4.7 million verdict.

Further, lost profits are not recoverable unless they are proved with reasonable certainty, and may not be based on mere speculation or conjecture. Allen v. Michigan Bell Telephone Co. 61 Mich. App. 62, 68-69, 232 N.W.2d 302 (1975). There was no proof at trial to support this award of $600,000.00.

There is simply no legal or evidentiary basis for the jury's award of $600,000.00 for loss of business and income. Therefore, this Court, pursuant to FRCP 59 (e), must amend the judgment to strike this unsupported portion of the jury's award.

E. DEFENDANTS ARE ENTITLED TO HAVE THE JUDGMENT AMENDED TO REFLECT A FINDING OF NO LIABILITY ON THE ACCOUNT STATED CLAIX BECAUSE THE JURY'S AWARD OF AMOUNTS WHICH WERE NEVER "STATED" 0R AGREED UPON BETWEEN THE PARTIES SHOWS JURY CONFUSION AND/OR BIAS AND A FAILURE OF PROOF OF AN ESSENTIAL ELEMENT OF AN ACCOUNT STATED CLAIM

In this case, the jury's verdict is inconsistent regarding the account stated claims. The jury was instructed that to find liability on these account stated claims, they must decide whether Plaintiffs and Defendants agreed that a "balance struck ... was correct", and whether there was a promise by Defendants to pay "such balance". (Exhibit "L" hereto, p. 153). The jury found Defendants liable on the account stated claims, but awarded damages in amounts which Plaintiffs never contended were "stated" or agreed upon between the parties.

Plaintiffs' Trial Exhibit 366 showed that the last bill to Defendant DELOREAN, dated December 17, 1992, was in the amount of $2,972,905.00. During the trial, Plaintiffs claimed that there was a $1 million math error in the 12/17/92 billing and they were actually owed $1 million more, but admitted that they were stuck with the $2,972,905.00 figure for the account stated claim. But the jury awarded $3,427,905.00 against Defendant DELOREAN, splitting the difference of the alleged $1 million math error and adding $500,000 to $2,972,905.00. But there was no evidence whatsoever at trial that the parties ever agreed upon $3,427,905.00 as a correct statement of the account between them or that Defendants ever promised to pay that amount. To have

an account stated, the parties must agree to the correctness of a specific figure and a party must promise to pay that figure. The jury cannot invent a new figure that the parties never agreed upon and impose it on them as an account stated.[12]

The same inconsistency infects the jury's findings on the account stated claim against Defendant ECCLESIASTES. Plaintiffs' trial exhibit 365 showed the last bill to ECCLESIASTES was $1,408,689.26. The jury found ECCLESIASTES liable on the account stated claim, but awarded $1,311,989.00 by subtracting the payments on billings shown in Defendants' trial exhibit 1828A from the $1,408,689.26 figure.[13] But the parties never agreed on $1,311,989.00 as the correct amount of an account stated between them. As with the finding against Defendant DELOREAN, this is a number created by the jury which the parties have never agreed upon.

The jury awarded different figures than Plaintiffs contended were agreed upon between the parties. Plaintiffs

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[12]The jury's addition of $500,000 which Plaintiffs admitted they weren't even entitled to on the account stated claim only highlights the jury's prejudice against Defendants and their willingness to ignore the law and do anything possible to make Defendants pay for the alleged bad acts which came into evidence through the RICO claim as discussed hereinabove.

[13]Defendants offered undisputed proof and Plaintiffs conceded at trial that Logan made payments of $29,500 and $13,700 and $53,500 which were never credited by Plaintiffs in their billings to Logan. The jury credited these amounts against the $1,408,689.26 to arrive at their verdict.

therefore did not prove by a preponderance of the evidence that a balance was struck and a figure was settled and agreed upon as correct between the parties. On that basis, this Court must amend the judgment and strike the finding of liability on the account stated claims, pursuant to the authority of FRCP 59 (e). In the alternative, this Court could order a new trial on the account stated claims pursuant to the authority of FRCP 59 (a) based on the inconsistency in the jury's verdict. Global Van Lines, Inc. v. Nebeker, 541 F.2d 865, 868 (10th Cir. 1976).

IV. CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court order a new trial of the fraud, breach of express contract, and account stated claims, if denied then to amend the judgment to strike the award of $5 million punitive damages, strike the award of $600,000.00 for loss of business and income, and strike the finding of Defendants' liability on the account stated claims.

DATED: February 9, 1995

Respectfully Submitted,

FREIDBERG LAW CORP.

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APPENDIX L

18 USCA § 1961-1968 [RICO] L1-L32

§1961 Definitions L1
§1962 Prohibited Racketeering Activities ... L8
§1963 Criminal Penalties L10
§1964 Civil Remedies L21
§1965 Venue and Process L23
§1966 Expedition of Actions L24
§1967 Evidence L26
§1968 Civil Investigative Demand L26

CHAPTER 96-RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

1961. Definitions.
1962. Prohibited racketeering activities.[1]
1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

Historical Note

1970 Amendment. Pub.L. 91-452. Title IX. § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

Cross References

Registration revoked for violation of this chapter by commodity dealer, see section 12a of Title 7, Agriculture.

§ 1961. Definitions

As used in this chapter--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which

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[1]So in original. Does not conform to section catchline.

is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigation, section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relation, to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation

of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or

other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "Person" includes any individual or entity capable of holding, a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering, investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, and amended Pub.L. 95-575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub.L. 95-598. Title III. § 314(g), Nov. 6, 1973, 92 Stat. 2677.)

§ 1961. Definitions

As used in this chapter--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud) section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness,

victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1644 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346

(relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

[See main volume for text of (2) to (9)]

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the

investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.
(As amended Pub.L 98-473, Title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub.L 98-547, Title II, § 205, Oct 25, 1984, 98 Stat. 2770; Pub.L 99-570, Title XIII, § 1365(b), Oct. 27, 1986. 100 Stat. 3207-35; Pub.L. 99-646 § 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub.L 100-690, Title VII, §§ 7013, 7020(c), 7032,7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub.L. 101-73, Title IX § 968, Aug. 9, 1989, 103 Stat. 506; Pub.L. 101-647, Title XXXV, § 3560, Nov. 29, 1990, 104 Stat. 4927; Pub.L 103-322, Title IX § 90104, Title XVI, § 160001(f), Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub.L. 103-394, Title III, § 312(b), Oct 22, 1994, 108 Stat. 4140; Pub.L. 104-132, Title IV, § 433, Apr. 24, 1996, 110 Stat. 1274; Pub.L. 104-153, § 3, July 2, 1996, 110 Stat. 1386; Pub.L 104-208, Div. C, Title II, § 202, Sept. 30, 1996, 110 Stat. 3009___; Pub.L. 104-294, Title VI, §§ 601(b)(3), (i)(3), 604(b)(6), Oct 11, 1996, 110 Stat 3499, 3501, 3506.)

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections[1] (a), (b), or (c) of this section.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

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[1]So in original. Probably should be "subsection".

§ 1962. Prohibited activities

[See main volume for text of (a) to (c)]

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(As amended Pub.L. 100-690, Title VII, § 7033, Nov. 18, 1988, 102 Stat. 4398.)

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable

for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law (1) any interest the person has acquired or maintained in violation of section 1962;

(2) any--

(A) interest in;

(B) security of,

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participate in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States a property described in this subsection. In leu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be found not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section include--

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such

property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section, or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order

outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to sub-paragraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or address an indictment or information described in sub-paragraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section. the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry

of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited

shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to--

(1) grant petitions for mitigation or re-mission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter

(2) compromise claim arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means making due procession for the rights of innocent persons; and

(5) the appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to--

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or instigation of forfeiture.

(3) the restitution of property to victims of an offense petitioning for remission or allegation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition, and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (1), no party claiming an interest in property subject to forfeiture under this section may--

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or investigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person

known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing. the court shall consider the relevant portions of the

record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant--

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(As amended Pub.L. 98-473, Title II, §§ 302, 2301(a)-(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub.L. 99-570, Title XI, § 1153(a), Oct. 27, 1986, 100 Stat. 3207-13; Pub.L. 99-646, § 23, Nov. 10, 1986, 100 Stat. 3597; Pub.L. 100-690, Title VII, §§ 7034, 7058(d), Nov. 18, 1988, 102 Stat. 4398, 4403; Pub.L. 101-647, Title XXXV, § 3561, Nov. 29, 1990, 104 Stat. 4927.)

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce;

or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

[See main volume for text of (a)]

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restrain orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of violation of section 1969 of this chapter may sue

therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

[See main volume for text of (d)]

(As Amended Pub.L. 98-620, Title IV, § 402(24)(A), Nov. 8, 1984, 98 Stat. 3359; Pub.L. Title I, § 107, Dec. 22, 1995. 109 Stat. 758.)

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpena issued by such

court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such Court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. (As amended Pub.L. 98-620, Title IV, § 402(24)(B), Nov. 8, 1984, 98 Stat 3359.)

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall--

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such

definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forth-with or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be as-sembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall--

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by--

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on be-half of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be

responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of--

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly--

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he

shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for com-pliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the Judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

Supreme Court, U.S.
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No. 97-1389

In The

Supreme Court of the United States

October Term, 1997

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware Corporation (formerly known as Logan Manufacturing), a Delaware Corporation, Jointly and Severally,

Petitioners,

vs.

MORGANROTH & MORGANROTH, a Michigan General Partnership, and MAYER MORGANROTH,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Circuit was correct in affirming the jury verdict rendered in favor of Morganroth on claims for fraud, breach of contract, and account stated based on the finding that the verdict was not the product of passion or prejudice, but was supported by overwhelming and compelling evidence?

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STATEMENT OF THE CASE

A. Nature of the Case/Course of Proceedings/Disposition.

The Petition misrepresents the nature of the case and course of proceedings below.

Attorney, Mayer Morganroth, and his law firm, Morganroth & Morganroth (collectively, "Morganroth"), filed the subject action against John Z. DeLorean ("DeLorean") and Ecclesiastes 9:10-11-12, Inc. f/k/a Logan Manufacturing Co. (hereinafter, "Logan"), consisting of seven claims: (1) RICO; (2) common law fraud; (3) breach of express contract; (4) breach of implied contract; (5) account stated; (6) quantum meruit; and (7) unjust enrichment.

DeLorean and Logan filed a sham counter-complaint alleging malpractice, which was dismissed on motion. Nevertheless, DeLorean and Logan asserted affirmative defenses and recoupment defenses challenging every aspect of Morganroth's representation. These defenses survived and were fully litigated at trial notwithstanding dismissal of the counter-complaint.

On September 8, 1994, trial of the instant action commenced, and after 42 days of testimony, evidence, argument by counsel, instructions, and deliberations, the jury returned its verdict on January 4, 1995 in favor of Morganroth with respect to the claims for fraud, breach of express contract and account stated, and in favor of DeLorean and Logan on Morganroth's RICO claim. (App. A). The jury also found against DeLorean and Logan on their affirmative defenses and recoupment defenses, and did not render a verdict on Morganroth's quasi contract claims because they found the existence of an express contract. (App. at 4a-6a).

By orders dated April 17, 1995, the District Court denied DeLorean's and Logan's post-judgment motions for attorney fees on the RICO claim, relief from judgment, and for new trial, but granted DeLorean's motion to alter or amend the judgment by striking the punitive damages award.

DeLorean and Logan thereafter filed an appeal with the Sixth Circuit alleging that they were prejudiced by virtue of the District Court's denial of their pretrial motions to dismiss the RICO claim, that the jury verdict on Morganroth's claims for fraud, breach of contract, and account stated was against the weight of the evidence, and that the District Court erroneously denied DeLorean's and Logan's motion for Rule 11 sanctions on the RICO claim. Morganroth filed a cross-appeal regarding the District Court's post-judgment order striking the punitive damage award.

After full briefing and oral argument, the Sixth Circuit affirmed: (1) the jury verdict in favor of Morganroth; (2) the District Court's denial of DeLorean's and Logan's post-trial motion for Rule 11 sanctions on the RICO claim; and (3) the District Court's post-judgment order striking the punitive damage award. (Pet. App. A). Subsequently, DeLorean and Logan filed a motion for reconsideration with the Sixth Circuit, which was denied on October 14, 1997. (Pet. App. B).

B. Relevant Facts.

The Petition misrepresents virtually all of the facts relevant to this case. A correct recitation of the relevant facts is set forth below.

This case tells the story of an attorney, Morganroth, who successfully devoted over ten years of his life working day and night for two clients, DeLorean and Logan, to the detriment of his large legal practice in order to provide legal representation to fight for DeLorean's freedom and to save tens of millions of dollars in assets of DeLorean and Logan. (R.287 at 162, 164-165; R.250 at 66; R.277 at 6-13; R.271 at 131; R.300 at 22-24, 29-30; R.301 at 77-78, 119-123, 148-161). When Morganroth's representation ceased in February 1993, DeLorean was free from criminal charges in the United States (R.289 at 149-150), and possessed a net worth of in excess of $51 million (App. at 13a-19a, 22a-28a, 84a-85a), but DeLorean and Logan had defrauded Morganroth out of in excess of $5 million in legal fees and expenses.

DeLorean first contacted Morganroth in 1982, and indicated that he was interested in Morganroth acting as his legal counsel. (R.256 at 33-34). At the time, DeLorean already had been arrested, and sought counsel in connection with the California criminal cocaine case and with respect to various civil actions which were on the horizon. (R.256 at 33-37; R.287 at 162-164). A formal arrangement was discussed where DeLorean orally agreed to pay Morganroth's customary hourly rate in accordance with Morganroth's standard practice. (R.256 at 37-38, 47, 49-50; R.277 at 14-16).

In early 1983, DeLorean asked if Morganroth was available to serve as his lead trial counsel in the criminal cocaine case, but Morganroth had to decline because he already was committed to handle another trial. (R.256 at 38-41). DeLorean then asked Morganroth to focus his attention on the possibility of suing the British and United States governments, to examine papers and documents regarding existing and potential problems, and to try to settle claims that had been filed against DeLorean and Logan by the Trustee in the DMC bankruptcy proceedings (the "Trustee"). (*Id.* at 41-42, 44-46). During the discussions, DeLorean re-confirmed that Morganroth would be paid his customary hourly rate. (*Id.* at 47).

Just a couple of months later, an avalanche of cases tumbled down on DeLorean and Logan, including adversary proceedings, district court proceedings, and tax proceedings. (*Id.* at 48, 51-52, 56-59). In connection therewith, restraining orders were entered against DeLorean and Logan with respect to their assets. (*Id.* at 48-49).

Although Morganroth was not counsel of record in 1983 and 1984, he performed substantial legal services for DeLorean and Logan, and he continued to provide consultation and advice to DeLorean regarding the defense of the California criminal cocaine case which was tried in 1984. (*Id.* at 60-61, 86-87).

In 1984, district court proceedings pending against DeLorean and Logan around the country were consolidated in multi-district litigation, Judge George E. Woods presiding. (*Id.* at 59-60).

In 1985, Morganroth took over as sole litigation counsel for DeLorean and Logan in all proceedings, including a criminal warrant issued in Switzerland, and became counsel of record. (*Id.* at 60-66, 87; R.288 at 58, 61-62, 69-71). The civil cases were massive, most of which each sought $100 million per count and in the aggregate $500 million per case. (R.256 at 57; R.288 at 84).

From the time Morganroth took over the multitude of civil actions through September 1987, enormous discovery and motion practice was conducted. (R.256 at 97-99, 131; R.288 at 86). Morganroth was unassisted in his representation of DeLorean and Logan, while the opposition had dozens of attorneys working on the matters. (R.288 at 66-69; R.300 at 29-30).

DeLorean also was indicted in Detroit on criminal racketeering and tax charges, and a trial was conducted in 1986. (R.256 at 147, 150). Morganroth coordinated the defense of the case and worked on it seven days a week. (R.256 at 149-151; R.287 at 159-162). Morganroth even was responsible for bringing in the key evidence believed to have turned around the case and resulted in acquittal. (R.256 at 152-157; R.287 at 160-161; R.289 at 149-152).

In 1987, DeLorean and the Trustee commenced settlement negotiations, at the strong suggestion of Judge Woods and Judge Graves, regarding a multitude of complex cases brought by the Trustee. A marathon negotiating session involving 12-14 attorneys on behalf of the Trustee on the one hand, and Morganroth, attorney Thomas Kimmerly ("Kimmerly"), and DeLorean on behalf of DeLorean and Logan on the other hand, lasted approximately 24-35 straight hours, and resulted in a settlement of the Trustee's claims. (R.294 at 61-66; R.288 at 123-125, 132).

DeLorean was extremely pleased with the settlement of the Trustee's claims as he actually received a net gain. (R.294 at 72, 103, 120-123; R.288 at 122-123; R.290 at 29-31; R.289 at 157; R.301 at 60-61). Prior to Morganroth's representation, DeLorean had made offers to personally pay $29 million to settle with the Trustee, and DeLorean would not have received any of the assets held by the DeLorean Family Trust. (R.288 at 115-116). But in the settlement, DeLorean received all of the assets from the DeLorean Family Trust worth $25-$50 million including Logan, even though DeLorean had no ownership interest or rights therein whatsoever (R.294 at 119; R.288 at 79-83, 95-102, 107-108); and he also received $2 million in cash, the $800,000 Bridgewater Escrow, patents, trademarks and tradenames valued by DeLorean at $15 million plus other valuable benefits in exchange for two payments totalling $9.36 million to be made by Logan, a company which DeLorean had not even owned. (R.294 at 70, 82-83, 98, 102-103; R.288 at 102-115). In fact, the settlement was so good that the DMC creditors committee filed objections thereto (R.294 at 108, 112-113), and their counsel, Malcolm Schade ("Schade"), called the settlement the best leveraged buyout he ever saw. (R.300 at 31).

Morganroth had performed substantial legal services on behalf of DeLorean and Logan from late 1982 through the 1987 settlement, however, Morganroth still had not received one cent in payment of fees or for expenses advanced. (R.256 at 98-99, 112-113; R.277 at 40; R.288 at 91, 105). By the time of the 1987 settlement with the Trustee, legal fees and expenses owed to Morganroth by DeLorean totalled $4 million, and owed by Logan totalled in excess of $1 million. (R.277 at 24). When DeLorean's and Logan's assets were released from the restraints in 1987, DeLorean and Logan collectively paid Morganroth $450,000 on account. (*Id.* at 24-26). DeLorean also began attempting to sell assets so that he could clear up his debts including the outstanding fees owed to Morganroth. (App. at 56a-62a).

Although the 1987 settlement with the Trustee resolved a multitude of claims, a lot of other cases were still pending against

DeLorean and Logan which Morganroth continued to work on, and a lot of cases were coming down the pike. (R.294 at 102-104, 128-130; R.287 at 179-181; R.288 at 45-46). In addition, Morganroth became general corporate counsel for Logan, worked on many commercial transactions for both DeLorean and Logan, and represented Logan in several cases. (R.294 at 76, 131-134).

On January 24, 1989, DSQ filed an action in New York against DeLorean seeking to enforce a $53 million default judgment rendered in London. (R.295 at 32-37). When the action was filed, ex parte restraining orders were entered by the court over DeLorean's and Logan's assets. (*Id.*). The restraints interfered with Logan's ability to make the final payment of the 1987 settlement which was due within one week, but Morganroth successfully petitioned for an extension on one occasion. (*Id.* at 81-85).

Summary judgment in favor of DSQ was eventually granted, but enforcement was stayed. (*Id.* at 85-91). DeLorean then finally relented to Morganroth's repeated urging to hire United Kingdom counsel which DeLorean had previously rejected on the grounds that he did not think he could get justice there. (*Id.* at 23, 29-30, 46-47, 77-78; R.300 at 188-194, 198-199; R.301 at 42-46). Morganroth paid all expenses to fly to the United Kingdom to assist in a motion to set aside the default judgment, which was granted, but the ruling was stayed for appeal. (R.295 at 103-117, 139; R.290 at 135-140).

By mid-October 1990, DeLorean and Logan had reached a settlement of the DSQ case, and as of that time, Morganroth had received sporadic payments from DeLorean and Logan totalling $800,000 on account. (R.271 at 36-37). Morganroth believed that he would be paid the outstanding balance based upon DeLorean's repeated acknowledgement of amounts due and repeated promises to pay during regular oral discussions regarding fees and during DeLorean's review of detailed time sheets and periodic invoices. (R.278 at 118, 131; R.296 at 45-46, 160-162; R.301 at 172-184; R.303 at 69-74).

When the 1990 settlement was consummated, the restraining orders over the assets were vacated and DeLorean resumed the process of attempting to sell his substantial assets which would produce more than sufficient cash to satisfy the outstanding fees owed to Morganroth. (R.277 at 48). Morganroth sent written composite bills to DeLorean and Logan with back up documentation because of the fact that the assets were going to be sold in order to pay all of the outstanding fees. (*Id.* at 49-50, 56-62). Prior to sending the composite billings, Morganroth discussed with DeLorean the fees owed and agreed to retroactively reduce his hourly rate because of the volume of work, amount of money owed over the eight year relationship, and the promise of immediate payment. (*Id.* at 51-52, 54; R.278 at 9, 17-18). After DeLorean received the 1990 billings for Logan and himself,[1] DeLorean confirmed that all fees would be paid upon the sale of any one of the assets. (R.277 at 64-65). In addition, Logan carried the fees owing to Morganroth on its audited financial statements. (*Id.*)

Morganroth continued to perform substantial legal services on behalf of DeLorean and Logan with respect to civil matters, commercial transactions, tax matters, corporate matters, sales of assets and properties, and a criminal warrant issued out of the United Kingdom. (*Id.* at 67, 69, 77-78, 87-90, 96-99). During such time period, Morganroth sent bills carrying forward the unpaid fees and expenses, DeLorean continued to acknowledge the amounts due and Logan continued to carry its debt on its audited financial statements. (R.292 at 147-150, 152-154, 173, 215-220; R.277 at 65-74, 76-77, 95-96). DeLorean also continued to represent that all of the amounts owed by DeLorean and Logan would be paid from the proceeds of sale of assets and properties. (R.277 at 69, 71, 74).

---

1. Although the formula was correctly set forth in DeLorean's billing, the amount of $2,595,305 was inadvertently set forth in the billing as a result of a typographical error as opposed to $3,595,305, which was owed by DeLorean. (R.277 at 51-52, 91).

In August 1992, DeLorean sold his New York co-op for $11.5 million. (*Id.* at 74-75; R.288 at 113). When the sale was consummated, DeLorean advised Morganroth that the proceeds were being used to pay off the DSQ settlement and for a capital infusion in Logan so that the company would be stronger in order to facilitate an imminent sale of Logan's assets, and therefore, he would be paid all fees at the closing of the Logan sale. (R.277 at 75). Based upon DeLorean's representations, Morganroth continued to perform legal services for DeLorean and Logan. (*Id.* at 77-78, 86-90, 97-98, 103-106).

In December 1992, a closing for the Logan asset sale was scheduled, but DeLorean then advised Morganroth that the fees would be paid by the end of January 1993 because of tax considerations instead of at the closing. (*Id.* at 96, 99, 107). During a telephone discussion, DeLorean for the first time raised an objection to payment of an hourly fee for the *Cork Gully* case. (*Id.* at 100-102). Although Morganroth reminded DeLorean that DeLorean had agreed in May 1990 and then again in October and November 1990 that the fee for the *Cork Gully* case would be converted from contingent to hourly in connection with the agreement to dismiss the case as part of the consideration given in the DSQ settlement, Morganroth agreed to waive the $400,000 fee if all other fees were satisfied by the end of January. (*Id.*)

On January 5, 1993, the Logan asset sale was consummated and DeLorean received $5.75 million in cash with additional substantial installment payments to be paid to him. (*Id.* at 107, 111). Morganroth spoke with DeLorean regularly after the closing, and DeLorean told Morganroth not to worry about fees and that there also would be plenty of money derived from a deal that he structured through his New Jersey law firm for the sale of the Bedminster Estate which was scheduled to close during the first few days of February. (*Id.* at 107-110).

Instead of paying Morganroth as promised, DeLorean and Logan filed a sham malpractice lawsuit against Morganroth in New York on February 2, 1993. (*Id.* at 108-109). Nevertheless,

DeLorean continued to represent that all fees were going to be paid and even sought tax advice from Morganroth which was provided since Morganroth had not yet found out about the lawsuit. (*Id.* at 108-109, 113, 134). Soon after the New York malpractice action was served, the case was dismissed by the court on motion. (*Id.* at 109-110).

Morganroth later learned that attorney Edward Freidberg ("Freidberg") had secretly commenced working on the malpractice lawsuit to "handle" Morganroth as of October 15, 1990, and that Freidberg received approximately $1 million from DeLorean and Logan during a two-year time period when Morganroth was told no funds were available. (*Id.* at 112-125; App. at 70a-74a).

REASONS FOR DENYING THE WRIT

Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, review on a petition for a writ of certiorari is not a matter of right, but of judicial discretion. Rule 10 further provides that a petition for a writ of certiorari will be granted only for compelling reasons.

No special or important reasons exist in this case warranting the granting of DeLorean's and Logan's Petition. The issues proposed for review do not involve a conflict among the circuits. To the contrary, the Petition actually challenges the sufficiency of the evidence regarding the jury verdict rendered in favor of Morganroth on the claims for fraud, breach of contract, and account stated. Apparently recognizing that Rule 10 makes clear that a petition for certiorari is disfavored when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law, DeLorean and Logan attempt to characterize their arguments as focusing upon the issue of standing to sue under the RICO statute. But any purported issues in this case regarding RICO were rendered moot when the jury found in favor of DeLorean and Logan on the RICO claim. Indeed, the Sixth Circuit properly concluded, from its review of universal rules of law governing the admission of evidence as applied to the record in

this case, that DeLorean's and Logan's request for a review of the District Court's denial of their pretrial motions to dismiss the RICO claim was unnecessary. In short, the Sixth Circuit affirmed the jury verdict on the grounds that: (1) DeLorean and Logan waived their right to object to the admission of evidence that they later alleged to be prejudicial after trial since they failed to so object during trial; (2) regardless of the presence of the RICO claim, the evidence challenged by DeLorean and Logan as inadmissible was relevant to support Morganroth's non-RICO claims and to rebut DeLorean's and Logan's affirmative defenses and recoupment defenses; and (3) the jury verdict rendered in favor of Morganroth was not the product of passion or prejudice from the RICO claim, but was supported by overwhelming and compelling evidence. In any event, the objective of DeLorean's and Logan's Petition is far too narrow and limited for this Court to grant the Petition. DeLorean's and Logan's Petition should be denied.

I. THE SIXTH CIRCUIT CORRECTLY DETERMINED THAT NO REASON EXISTS FOR REVIEWING THE DISTRICT COURT'S RULINGS DENYING THE PRETRIAL MOTIONS TO DISMISS THE RICO CLAIM BECAUSE THE SAME EVIDENCE WOULD HAVE BEEN ADMITTED REGARDLESS OF THE PRESENCE OF A RICO CLAIM.

Although the jury found in favor of DeLorean and Logan on the RICO claim, DeLorean and Logan contend that this Court should review the District Court's rulings on the pretrial RICO motions because the District Court's refusal to dismiss the RICO claim purportedly allowed Morganroth to present inflammatory evidence at trial regarding nine discreet categories of evidence. The Sixth Circuit, however, carefully analyzed each of the nine categories of challenged evidence and correctly determined that review of the District Court's rulings on DeLorean's and Logan's pretrial RICO motions was unnecessary since the so-called inflammatory evidence was presented with no contemporaneous objections and/or was relevant to the non-RICO claims and defenses. As shown below, the Sixth Circuit properly sustained

the District Court's evidentiary rulings regarding each of the categories of evidence challenged by DeLorean and Logan regardless of the presence of the RICO claim.

A. DeLorean's and Logan's Consistent Failure to Object to the Admission of Such Evidence Operated as a Waiver.

The record, as confirmed by the Sixth Circuit, reveals that DeLorean and Logan did not assert objections based on relevance, bad character evidence or prejudice to four of the categories of evidence challenged on appeal — (1) failure to pay other attorneys; (2) ties to organized crime;[2] (3) statement about Hillel Levin; and (4) relationship with Roy Nesseth.

The Sixth Circuit correctly found that the consistent failure to object to this evidence operated as a waiver by DeLorean and Logan of their claim regarding the admission of such evidence. Such a failure to object at the time of admission operates as a waiver pursuant to Fed. R. Evid. 103(a). *See United States v. LeBlanc*, 612 F.2d 1012, 1013-1015 (6th Cir. 1980).

B. The Challenged Evidence Was Admissible Pursuant to Rule 404(b) as to Morganroth's Claim For Fraud.

As the Sixth Circuit concluded, even if DeLorean's and Logan's consistent failure to object had not operated as a waiver, the admission of evidence that DeLorean and Logan consistently used the same devices to avoid paying other attorneys during the same time period that they attempted to avoid paying Morganroth was relevant to prove the element of intent to defraud in Morganroth's fraud claim pursuant to Fed. R. Evid. 404(b). Because it is difficult

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2. The record reveals, and the Sixth Circuit found, that DeLorean not only failed to object to the admission of the exhibits regarding this category, except for one exhibit, but he, in fact, introduced 11 exhibits regarding this very subject matter. The one objection that DeLorean did make was only on the grounds of lack of foundation, but, after objection, a witness provided further testimony that established the foundation.

to prove intent, knowledge or plan by direct evidence, such elements normally must be inferred from circumstantial evidence. *See United States v. Anendondo-Morales*, 624 F.2d 681, 684 (5th Cir. 1980); *see also United States v. Ellzey*, 874 F.2d 324, 329 (6th Cir. 1989); *United States v. Ausmus*, 774 F.2d 722, 727-728 (6th Cir. 1985). Accordingly, Rule 404(b) provides that evidence of "other acts" is admissible for proof of specific intent elements.[3] (*Id.*). Consequently, whether or not the District Court had ruled differently on DeLorean's and Logan's pretrial RICO motions, the Sixth Circuit correctly found that the evidence regarding non-payment of attorneys was relevant to Morganroth's common law fraud claim and the probative value for establishing fraudulent intent far outweighed any minor prejudicial effect.

The same holds true for DeLorean's failure to reimburse attorney Robin Bailey for funds advanced based upon DeLorean's false promise of immediate repayment. The District Court confirmed that the testimony regarding Bailey was admissible pursuant to Rule 404(b) regardless of the presence of a RICO claim as it was probative of DeLorean's and Logan's "motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident" with respect to Morganroth's common law fraud claim. (R.307 at 11-13). With respect to Bailey as well as other attorneys, including Morganroth, DeLorean made false promises of payment of money to an attorney without any present intention of performance in order to deceive and mislead the attorney.

The Sixth Circuit found that this testimony was not sufficiently prejudicial to warrant reversal in any event. Reversal based on improper admission of evidence is appropriate only when the admission interfered with substantial justice. *TCP Indus., Inc. v.*

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3. Indeed, a trial court is accorded broad discretion in determining the admissibility of such evidence under Rule 404(b), which determination can only be disrupted upon a showing of an abuse of discretion. *United States v. Ausmus*, 774 F.2d at 728; *United States v. Blankenship*, 775 F.2d 735, 739 (6th Cir. 1985).

Uniroyal, Inc., 661 F.2d 542, 550 (6th Cir. 1981); Fed. R. Civ. P. 61 ("No error in . . . the admission . . . of evidence . . . is ground for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); Fed. R. Evid. 103(a) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. . . ."). As the Sixth Circuit found, in light of the compelling evidence supporting Morganroth's case, admission of this evidence was harmless and would not warrant reversal. *See City of Cleveland v. Peter Kiewit Sons Co.*, 624 F.2d 749, 756 (6th Cir. 1980).

C. The Challenged Evidence Was Admissible to Rebut DeLorean's and Logan's Affirmative Defenses and Recoupment Defenses.

The Sixth Circuit properly found that the District Court's admission of the balance of the challenged categories of evidence — (1) forging of signatures and documents; (2) ties to organized crime; (3) purported cancellation of Logan pension plan; (4) money laundering;[4] (5) relationship with Roy Nesseth; and (6) appropriation of Logan profits — was correct on the grounds that this evidence illustrated the difficulty and complexity of Morganroth's representation of DeLorean and refuted DeLorean's claim that Morganroth negligently failed to make diligent inquiry into factual matters related to Morganroth's representation.

At trial, DeLorean and Logan brought this evidence into issue through the assertion of affirmative defenses and recoupment

4. This category related to Morganroth's opening statement where he described allegations regarding actions by DeLorean that formed the basis for a later claim in bankruptcy proceedings in which Morganroth represented DeLorean. As the Sixth Circuit noted, the District Court issued a cautionary instruction to the jury that Morganroth's statements were not evidence and that they would have to decide the case on evidence actually admitted during trial.

defenses alleging that Morganroth performed minimal legal services on their behalf (R.287 at 126-128) and that the positions advanced on their behalf in the underlying matters of representation were insupportable and made without investigation. (*Id.* at 150).

In order to rebut the contention that Morganroth performed minimal legal services, Morganroth offered evidence of the nature and complexity of the legal issues and allegations that were publicly made throughout Morganroth's representation such as those that Kimmerly worked on as co-counsel with Morganroth on behalf of DeLorean and Logan for which they still owe Kimmerly $3 million, those that Weitzman defended against in the California and Detroit criminal trials on behalf of DeLorean with the assistance of Morganroth, and those that were involved in the civil actions Morganroth took over from Weitzman.

In order to rebut the contention that certain positions advanced were insupportable and made without any investigation, Morganroth offered evidence that he, as well as other attorneys, were misled by information and documents supplied by DeLorean that later were discovered to contain misrepresentations and revisions of history after the attorney-client relationship had been terminated. (R.307 at 12). For this purpose, Morganroth offered testimony of Kimmerly and Weitzman regarding "factual" information that Morganroth, Weitzman, and Kimmerly received from DeLorean in contrast to the true facts that later surfaced, testimony of Thomopoulos[5] regarding DeLorean's forgery of the GPD documents and alteration of a prenuptial agreement in contrast to the "factual" information that DeLorean provided to Morganroth and other co-counsel for the purpose of defending DeLorean in various matters, and testimony of officers of Logan that DeLorean claimed in 1993 to have legitimately canceled the Logan pension plan in 1988 in contrast to DeLorean's statements to Morganroth as to the existence of the pension plan in 1992 and instructions on how to deal with it in connection with the Logan assets sale, among

5. Although DeLorean and Logan contend that Morganroth supposedly characterized Thomopoulos as "incredible" during the divorce, no such characterization was made by Morganroth.

other evidence uncovered after the termination of the attorney-client relationship.

As the Sixth Circuit and the District Court concluded, the evidence regarding these six categories was properly admitted because such evidence: (1) described the nature and details of lawsuits in which Morganroth defended on behalf of DeLorean thereby demonstrating and bolstering the amount and complexity of the work; (2) demonstrated DeLorean's failure to disclose crucial information to Morganroth which substantially increased the amount of work Morganroth was required to perform; (3) served as proof of the amount billed to DeLorean; and (4) supported Morganroth's assertion that DeLorean impeded investigation by, among other things, forging documents and misleading his attorneys.

II. THE SIXTH CIRCUIT ALSO CORRECTLY CONCLUDED THAT NO REASON EXISTS FOR REVIEWING THE DISTRICT COURT'S RULINGS DENYING THE PRETRIAL MOTIONS TO DISMISS THE RICO CLAIM BECAUSE OVERWHELMING EVIDENCE SUPPORTED THE JURY VERDICT ON THE CLAIMS OF FRAUD, BREACH OF CONTRACT, AND ACCOUNT STATED.

The Sixth Circuit not only correctly found that the challenged evidence would have been admitted regardless of the presence of the RICO claim, but it also properly sustained the District Court's finding that the jury verdict was supported by overwhelming and compelling evidence in any event.

The record does not support DeLorean's and Logan's bald contention of a biased and prejudiced jury. DeLorean's and Logan's position on appeal merely mimicked their contention set forth in their motion for a new trial, but the District Court, who had the opportunity to observe the witnesses as well as the demeanor and attentiveness of the jurors, rejected the position. (R.222). The absence of any prejudice or bias was evidenced by the jury's

demeanor, attentiveness, and attitude observed by all during the course of the trial as well as the precise and analytical questions raised by the jury during deliberations. (App. at 81a-83a; R.266 at 2-5). Had the jury been biased, *then they would not have found in favor of DeLorean and Logan on the RICO claim.*

Indeed, the Sixth Circuit and the District Court concluded that Morganroth's fraud, breach of contract, and account stated claims were supported by substantial and overwhelming evidence adduced at trial. The testimony of at least 13 witnesses, including DeLorean and officers of Logan, and the introduction of hundreds of trial exhibits as well as stipulations of fact agreed to by the parties overwhelmingly supported Morganroth's claims of fraud, breach of contract, and account stated. In contrast, DeLorean and Logan did not present even a single fact witness to dispute the testimony and evidence presented by Morganroth.

A. Overwhelming Evidence Supported the Jury's Verdict on Morganroth's Breach of Contract Claim.

On appeal, DeLorean and Logan suggested that Morganroth presented insufficient evidence to demonstrate: (1) the existence of an express contract;[6] and (2) the amount of hours performed by Morganroth in connection with the contract. As determined by the Sixth Circuit, Morganroth presented overwhelming evidence to the jury that was clearly sufficient to warrant its findings on both of the foregoing issues.

DeLorean and Logan reiterate in their Petition that Morganroth could not have worked enough hours to justify the jury verdict. They make much of the fact that Morganroth threw out his time sheets during the course of the ten year representation. But, as the

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6. In the Petition, DeLorean and Logan finally unequivocally concede that an express contract existed as pled and proved by Morganroth at trial. Even though DeLorean and Logan stipulated and admitted to the existence of a binding express contract with Morganroth at trial (R.276 at 4-5; R.272 at 93-94), they took the contrary position on appeal.

Sixth Circuit concluded, the testimony reveals that Morganroth along with Jeffrey B. Morganroth ("JBM") prepared detailed time sheets which indicated services performed, date of performance, amount of hours, and a running balance owing for all cases, including *Cork Gully*, throughout the entire representation. (R.278 at 118; R.296 at 45-46, 160-162; R.301 at 175-176; R.303 at 69-74). The testimony further reveals that Morganroth regularly provided the time sheets to DeLorean at his office for review, and only threw out the time sheets after approval by DeLorean in an effort to prevent DeLorean's adversaries from having any possibility of discovering the litigation strategies and thought processes. (R.301 at 172-184; R.302 at 139-140; 203-238). This procedure regarding review and approval of time sheets was confirmed by Walter Keating as well, a client of Morganroth's who was referred by DeLorean in 1991 on DeLorean's advice that Morganroth had the "best legal mind in the United States" and Morganroth had been "the basis of solving all of [DeLorean's] personal problems and [DeLorean's] business asset problems." (App. at 47a-56a). George Bushnell, President of the American Bar Association and a member of the Michigan Disciplinary Board, testified that there was nothing wrong with throwing out time sheets, and that actually providing the time sheets to a client at the lawyer's office for review would be above and beyond the standard of care. (R.258 at 11, 18-25). The testimony further demonstrates that Morganroth not only provided DeLorean with the time sheets for review and approval, but that Morganroth regularly discussed the amount of outstanding fees with DeLorean, and that DeLorean on each occasion acknowledged the amounts due and promised that the fees owed by Logan and him would be paid in full. (R.296 at 45-46, 123, 160-162; R.301 at 165-172; R.303 at 95-98).

DeLorean and Logan could not present a single fact witness at trial to contradict the explicit testimony regarding DeLorean's review and approval of detailed time sheets as well as his constant acknowledgement of the amount of fees owed during the entire representation. Nor could DeLorean and Logan present a single fact witness at trial to contradict explicit testimony by Morganroth on how he worked 80 to 100 hours per week, devoting a high

percentage of his time to DeLorean/Logan matters during a ten year period. (R.277 at 6-13). The testimony of every fact witness completely supported Morganroth's testimony regarding the long hours he devoted to the representation of DeLorean and Logan, including, but not limited to: (1) testimony by Kimmerly who acted as DeLorean's attorney and closest confidant for 20 years (R.287 at 158, 162-165; R.288 at 17; R.290 at 13, 16; R.250 at 65-71; R.289 at 115); (2) testimony by Schade, an attorney who represented adversaries of DeLorean and Logan in approximately 12 of the matters handled by Morganroth (R.300 at 29-30); (3) testimony by JBM who personally observed Morganroth's long work hours devoted to DeLorean/Logan matters when he served as a law clerk during the summers and as Morganroth's partner after he passed the bar in the fall of 1988 and who took over the day-to-day responsibilities of virtually all of the firm's non-related matters (R.301 at 119-124, 126, 142-161, 222-225; R.270 at 134-154); (4) testimony by DeLorean himself (R.272 at 86-87); (5) testimony by Steven Fellows, an attorney who shared office space with Morganroth until 1991 and was called as a witness by the defense (R.272 at 115-116; App. at 76a-78a); and (6) testimony by Maria Reed, who worked as Morganroth's secretary and was called as a witness by the defense (App. at 78a-80a). Even the Honorable George E. Woods, presiding judge over the massive multi-district litigation, noticed the long hours devoted by Morganroth on behalf of DeLorean and Logan:

> Well, Mr. Morganroth, I would be the last person in the world to depreciate your efforts on behalf of your client. I can't say that I have ever seen anybody who's been more assiduous in their attention or who has worked harder on their client's behalf than you. As you say, you have burned the candle at both ends running back here and there and doing every single thing that you can. He is fortunate to have you.

* * *

> I am not going to engage in further repartee on this. I meant it earlier when I said I thought you had done a great deal of running for and on behalf of your client. I did it to be very frank with you, because I have seen you absolutely draining yourself right out of the end of the faucet on this thing, doing everything that you can on behalf of your client and I commend you for that. (R.295 at 83-85).

In addition, further evidence supported the amount of the jury verdict,[7] including, without limitation:

• DeLorean admitted personally owing fees to Morganroth in the amount of $2.2 million near the end of 1990 and $2.5 million in 1991 as attested to in a loan commitment prepared and signed by DeLorean (R.277 at 41-46), a letter to the American Arbitration Association prepared and signed by DeLorean (*Id.* at 46-47; R.272 at 93-94; App. at 96a), and several personal financial statements of DeLorean (App. at 13a-22a, 43a, 99a);

• Periodic bills carrying forward the unpaid amounts and itemizing legal services performed by Morganroth on DeLorean's behalf were sent, the last of which was dated December 17, 1992, which reflected an unpaid balance owed personally by DeLorean in the amount of $3,927,905[8] (R.277 at 50, 86-90, 96-99, 108-109, 113, 134);

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7. The verdict is entitled to considerable deference. *Adkins v. GAF Corp.*, 923 F.2d 1225, 1232 (6th Cir. 1991). Unless the Appellate Court is "certain indeed that the award was contrary to all reason," then the award must be sustained. *Cathey v. John Manville Sales Corp.*, 776 F.2d 1565, 1572 (6th Cir. 1985).

8. DeLorean misrepresents in the Petition that Morganroth could not substantiate the expenses charged in the billings and that Morganroth erroneously overcharged DeLorean by including $11,000 in sanctions, among other things. DeLorean's contention not only is false, but the record reveals that DeLorean and Logan

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• Logan admitted that it owed fees to Morganroth in the amount of $1,408,648.26 in its certified financial statements dated 1991-1993, and officers of Logan acknowledged that DeLorean swore under oath to such debt on an annual basis (R.292 at 150, 153, 173, 217-220, 224-225; R.272 at 93-94).

B. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Fraud Claim.

DeLorean and Logan have not challenged on appeal any aspect of Morganroth's pleading or proof regarding the fraud claim, except they contend that the evidence somehow was insufficient to establish that Morganroth reasonably relied upon the fraudulent misrepresentations made to him which induced him to perform the extensive legal services. At trial, Morganroth presented overwhelming evidence that he performed legal services and incurred expenses for and on behalf of DeLorean and Logan which continued in reliance upon repeated representations, acknowledgments, assurances, and sworn statements made by DeLorean and Logan over a ten year time period.

DeLorean and Logan, however, have suggested that Morganroth could not reasonably rely upon such representations because he served as DeLorean's attorney in fee disputes with attorneys William Garratt ("Garratt") and William Simon ("Simon"), other attorneys such as Kimmerly and Weitzman had not been paid, and allegations of fraud were leveled against DeLorean in litigation by others. DeLorean's and Logan's position not only was rejected by the jury after hearing all the evidence, but the District Court and the Sixth Circuit correctly rejected the position as well.

DeLorean's and Logan's contention that the evidence does not support Morganroth's reasonable reliance upon the fraudulent

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were in fact undercharged as: (1) Morganroth did not charge for some of the services performed; and (2) Morganroth retroactively reduced his hourly rate based upon volume of work and promise of immediate payment.

misrepresentations made to him over a ten year period utterly misses the mark because they stipulated to such reliance. DeLorean and Logan stipulated that:

> (i) DeLorean and Logan *at all times* were aware that Morganroth and his firm *intended* to be compensated for services rendered to DeLorean and Logan;
>
> (ii) DeLorean and Logan *at all times* were aware that Morganroth and his firm *intended* to be reimbursed for expenses they incurred on DeLorean's and Logan's behalf; and
>
> (iii) When Morganroth and his firm rendered legal services to DeLorean and Logan and paid expenses on their behalf, *Morganroth and his firm did so with the expectation of being compensated.*

(App. at 92a). In fact, DeLorean even admitted that Morganroth kept working because Morganroth "figured I was going to pay" (App. at 66a-68a), and that his statements to Morganroth may have led Morganroth to believe full payment was forthcoming. (App. at 64a, 68a-73a; R.272 at 48-49).

Such admissions as well as Morganroth's testimony as to his reliance (R.270 at 115) were further corroborated by DeLorean's conduct of praising Morganroth's performance, referring clients to Morganroth, and making what appeared to be good faith payments on account throughout the entire representation. (R.294 at 120-123; R.295 at 205; R.271 at 135; R.289 at 16; App. at 47a-51a; R.264 at 237-240). Indeed, the record is replete with evidence that Morganroth provided services and incurred expenses on behalf of DeLorean and Logan in reliance upon the false representations, acknowledgments, assurances, and sworn statements. Notwithstanding these repeated representations, acknowledgments, and assurances, Morganroth learned during discovery in the instant action that at the time DeLorean and Logan made such

representations: (1) DeLorean had been receiving and had access to large sums of cash although he had continuously claimed to lack access to any funds (App. C; R.292 at 95-98); and (2) DeLorean and Logan had secretly retained attorney Freidberg to bring a sham malpractice case against Morganroth in order to "handle" him and avoid paying the large balance owed, while continuing to induce Morganroth to provide legal services on their behalf for a period of 2 1/2 years thereafter since they wanted Morganroth to continue to provide legal services but knew he would not do so if aware of their true intent.

Moreover, any awareness by Morganroth that other attorneys had not been paid by DeLorean has no bearing because Morganroth was led to believe by DeLorean that attorneys had not been paid as a result of bail requirements and restraining orders that left no liquid assets available — the same reason given to Morganroth for the outstanding fees owed to him. (R.256 at 38, 48-49; App. at 67a-68a). The same holds true for DeLorean's non-payment of Kimmerly — even Kimmerly himself believed he would be paid. (R.287 at 166-169). In addition, Weitzman's testimony confirms Morganroth's reliance upon the fraudulent misrepresentations as Weitzman testified that Morganroth, like Weitzman, believed that DeLorean would never stiff him. (R.289 at 158-159).

Reference to Morganroth's representation of DeLorean in fee disputes with Garratt and Simon further misses the mark. The Garratt fee dispute was arbitrated, and Garratt's request for $600,000 was reduced to $125,000 award by virtue of DeLorean's affirmative defenses.[9] (R.270 at 168). Meanwhile, Morganroth learned during discovery in the instant action that DeLorean's position in the Simon fee dispute was premised upon DeLorean's fabricated version of events. (R.106, Ex.29 at 266, 269-271, 443-444). DeLorean even contended that he had not paid Simon

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9. DeLorean incorrectly suggests that Morganroth's RICO claim alleges a scheme to defraud attorney Garratt. On the contrary, Morganroth did not allege that DeLorean or Logan engaged in any RICO scheme against attorney Garratt.

because he lacked access to funds, but discovery in the instant action proved otherwise. (R.281 at 137-148).

Finally, DeLorean's and Logan's contention that Morganroth should not have relied upon their repeated representations and acknowledgements over a ten year period because allegations of fraud had been leveled against DeLorean is devoid of merit as well. DeLorean's and Logan's position is ironic in light of their constant assurances to Morganroth during his representation that they had not engaged in the wrongdoing alleged. During the trial, however, Morganroth presented substantial evidence that he, as well as other attorneys, were misled by information and documents supplied by DeLorean that later were discovered to contain misrepresentations and revisions of history after the attorney-client relationship had been terminated. (R.307 at 12). Leave it to DeLorean to suggest that Morganroth could not rely upon the repeated representations of his client, but somehow should reasonably rely upon negative allegations made by the client's adversary during contentious litigation.

C. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Account Stated Claim.

As the District Court and Sixth Circuit determined, Morganroth's account stated claim was supported by overwhelming evidence as well.

The testimony of Morganroth and JBM revealed that throughout the ten year representation, DeLorean regularly reviewed and approved time sheets which indicated the services performed on behalf of DeLorean and Logan, the date of performance, the amount of hours devoted, and a running balance of legal fees owed. (R.278 at 118; R.296 at 45-46; R.301 at 172-184; R.303 at 69-74). On each occasion, DeLorean agreed to the balance owing and promised full payment by both debtors. (*Id.*) In addition, the testimony of Morganroth and JBM also revealed that the outstanding balance for legal fees owed to Morganroth by DeLorean and Logan was regularly discussed with DeLorean, and

on each occasion DeLorean acknowledged the amount due and promised full payment. (*Id.*) The testimony further showed that after DeLorean and Logan received periodic billings, DeLorean acknowledged the amounts due and promised full payment through February 2, 1993. (R.277 at 65-78, 86-90, 96-99, 103, 106, 108-109, 113, 134).

III. EVEN IF IT WERE SOMEHOW NECESSARY TO REVIEW THE DISTRICT COURT'S DENIAL OF THE PRETRIAL RICO MOTIONS, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING SUCH MOTIONS IN ANY EVENT.

A. The Supposed Deficiencies Regarding the RICO Claim Raised on Appeal to the Sixth Circuit Missed the Mark.

In their appeal to the Sixth Circuit, DeLorean and Logan argued that the District Court abused its discretion in denying their pretrial motions to dismiss the RICO claim because: (1) Morganroth failed to provide any legal or factual support other than to simply argue that the RICO claim was based on previous RICO claims upheld by other judges; and (2) the only act that could have injured Morganroth was DeLorean's non-payment of fees and expenses which would not constitute racketeering activity under RICO. Although both contentions were erroneous, DeLorean and Logan have reiterated them in the Petition.

1. Morganroth provided sufficient legal and factual support to withstand the pretrial motions to dismiss.

A review of the briefs and exhibits submitted by Morganroth to the District Court in opposition to the motions completely refutes DeLorean's and Logan's position that Morganroth simply argued that the RICO claim was based on previous RICO claims upheld by other judges. In opposition to the Rule 12(b)(6) motion, Morganroth submitted a brief devoting in excess of 23 pages to RICO and citing in excess of 37 cases and legal authorities. (App. K). In opposition to the summary judgment motion, Morganroth

submitted a 66-page brief, citing 75 cases and legal authorities and referring to 57 accompanying exhibits consisting of deposition testimony, affidavits, and documentary evidence.[10] (App. L; R.106). The District Court did not deny the motions on the basis of argument that prior judges upheld RICO claims against DeLorean and Logan, but by exercising its sound discretion after reviewing voluminous case law and legal authority cited, as well as the testimony of numerous witnesses, documentary evidence, and stipulations of fact made by the parties, under the applicable standards of review which were clearly set forth in Morganroth's briefs. (App. K-L).

Morganroth's briefs addressed each challenge to the RICO claim and demonstrated that: (1) the predicate acts alleged were related and amounted to or posed a threat of continued activities; (2) a RICO enterprise was well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (3) violations of 18 U.S.C. § 1962(a) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (4) violations of 18 U.S.C. § 1962(b) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (5) violations of 18 U.S.C. § 1962(c) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (6) violations of 18 U.S.C. § 1962(d) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; and (7) injury to Morganroth's business or property by reason of violations of 18 U.S.C. § 1962 was well pled and supported by more than sufficient evidence.

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10. DeLorean and Logan also filed a pretrial motion for a separate trial of the RICO claim, and a Rule 50(a) motion for directed verdict as to the RICO claim and quasi contract claims only. In opposition to these motions regarding the RICO claim, Morganroth filed lengthy briefs citing numerous cases and legal authorities and referring to substantial testimony, exhibits, and stipulations of fact made by the parties. (App. M-N).

2. Requisite racketeering activity was well pled and supported by sufficient evidence to withstand motions to dismiss and/or summary judgment.

The one line devoted to this contention in DeLorean's and Logan's appeal to the Sixth Circuit appeared to be premised upon the assertion that non-payment of money cannot constitute racketeering activity. DeLorean reiterates this same assertion in the Petition.

The RICO statute defines racketeering activity as the commission of any act delineated in 18 U.S.C. § 1961(1). As pointed out in Morganroth's appellate brief to the Sixth Circuit, the RICO claim was not based upon the non-payment of money, but rather, the commission of five different types of predicate racketeering acts set forth in 18 U.S.C. § 1961(1): (1) violation of 18 U.S.C. § 1341; (2) violation of 18 U.S.C. § 1343; (3) violation of 18 U.S.C. § 1952; (4) violation of 18 U.S.C. § 1956; and (5) violation of 18 U.S.C. § 1957. (R.1 at 26-33).

The Sixth Circuit has ruled that the commission of at least two predicate acts occurring within ten years of each other in furtherance of even a single fraudulent scheme is sufficient to satisfy the pattern of racketeering activity element. *Newmyer v. Phitaletic Leasing, Ltd.*, 888 F.2d 385, 396-397 (6th Cir. 1989). *Accord, Dana Corp. v. Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886-887 (6th Cir. 1990). Morganroth not only alleged the commission of such racketeering acts with respect to the Morganroth Scheme, but more than sufficient evidence was adduced during discovery and at trial to withstand a challenge to the factual sufficiency of the "racketeering activity" allegation based upon the Morganroth Scheme alone. (App. at 139a-141a, 223a-229a; R.106; R.1).

Nevertheless, DeLorean and Logan attempt to cloud the issues by arguing that Morganroth lacked standing to bring the RICO claim because he alleged the commission of multiple schemes that purportedly were unrelated and did not cause injury to Morganroth. DeLorean's and Logan's position founders on two separate grounds.

First, Morganroth did not allege the commission of the multiple schemes for the purpose of seeking damages therefor as DeLorean and Logan disingenuously suggest,[11] but such schemes were alleged for the purpose of delineating an ongoing association in fact enterprise having a common purpose, continuity of structure and personnel, and pattern of roles necessary to carry out the racketeering activity over an extended period of time.

Second, the multiple schemes alleged by Morganroth were interrelated; they were not haphazard events strung together by Morganroth as DeLorean and Logan incorrectly contend. Morganroth alleged that key participants in the development, manufacture, and distribution of the DeLorean sports car secretly came together to form a criminal network and used their positions and relationships to commit illicit activities for the purpose of illegally obtaining money and property. Ultimately, the car company failed because the criminal network illegally and fraudulently diverted funds to line its own pocket that were necessary for the operation of the car company. When the members of the criminal network could no longer forestall allegations of wrongdoing, they hired attorneys to defend their conduct. The attorneys thought they were defending the legitimate business operations of the failed car company based upon facts and documents provided to them. In reality, the criminal network attempted to further their overall scheme so that the members of the criminal network could defend against the allegations of wrongdoing while protecting and keeping their ill-gotten gains intact by fraudulently inducing the attorneys to perform legal services in reliance upon false promises of payment and false information. It is within this context that Morganroth alleges that the multiple schemes were committed by the criminal network. Morganroth was one of the attorneys that the criminal network deceived along with Weitzman, Kimmerly, and others.

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11. Morganroth alleged that injury to his business and property was proximately caused solely by reason of the violations of the RICO statute that were directed against him in connection with the Morganroth Scheme only.

B. No Compelling Reasons Exist For Granting Review.

In a last ditch effort to create a reason for this Honorable Court to grant the Petition, DeLorean and Logan disingenuously contend that further guidance regarding an issue of RICO standing is needed. They contend that this case somehow involves a purported conflict in the circuits regarding the application of the RICO standing rules enunciated in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) because some circuits have distinguished between corporate shareholders and corporate creditors.

DeLorean's and Logan's position utterly misses the mark because this case in no way involved any purported issue regarding the application of the RICO standing rules enunciated in *Holmes* to different classes of plaintiffs nor was any such issue even raised by DeLorean and Logan with the District Court or the Sixth Circuit. Indeed, the Sixth Circuit could not have reached this issue even if the issue had been raised at the District Court level because it determined that review of the District Court's rulings regarding the RICO claim was unnecessary. Consequently, the Sixth Circuit's decision in this case did not and could not have conflicted with any decision of another Circuit Court or state court of last resort regarding the application of *Holmes*.

Moreover, DeLorean's and Logan's assertion that Morganroth should not have been entitled to pursue a RICO claim because he once represented DeLorean and Logan and purportedly was in pari delicto with them equally misses the mark as well. DeLorean and Logan are unable to cite any portion of the RICO statute or any law that prohibits a lawyer from pursuing a RICO claim against another for violations of the RICO statute that were perpetrated directly against the lawyer. Likewise, DeLorean and Logan are unable to cite any statute or law that prohibits a lawyer from pursuing claims against his former client merely because the lawyer once represented the client. In this case, DeLorean and Logan not only committed wrongs directly against Morganroth, but they filed malpractice claims and counterclaims against Morganroth and

asserted affirmative defenses and recoupment defenses that challenged virtually every aspect of Morganroth's representation. As the jury determined after hearing all of the evidence, Morganroth was not in pari delicto with DeLorean — Morganroth was a victim of fraud perpetrated by DeLorean and Logan directly against him. Indeed, the record reveals that Morganroth not only discovered after the termination of his representation that DeLorean and Logan had defrauded him out of substantial legal fees and expenses, but that DeLorean's assurances that he had not engaged in any wrongdoing were based upon misrepresentations, revisions of history, and perhaps fabricated documents.

CONCLUSION

For all of the foregoing reasons, Respondent, Morganroth, respectfully requests this Honorable Court to deny the Petition.

Respectfully submitted,

MAYER MORGANROTH
Counsel of Record
MORGANROTH & MORGANROTH
Attorneys for Respondents
3000 Town Center
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APPENDIX

APPENDIX A — TRANSCRIPT OF JURY VERDICT DATED JANUARY 4, 1995

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93 CV 70848 DT

Detroit, Michigan
Wednesday, January 4, 1995

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

JURY VERDICT

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT COURT JUDGE, and a jury.

* * *

Appendix A

[2] Detroit, Michigan

Wednesday, January 4, 1995

10:35 a.m.

THE COURT: We received a note that says, "We have reached a verdict, the jury."

Are the parties prepared to receive the verdict?

MR. FLESHMAN: Yes, Your Honor.

MR. MORGANROTH: Yes, Your Honor.

MS. NADLER: Yes, Your Honor.

THE COURT: All right. Bring in the jury.

(Jury enters the courtroom at 10:35 a.m.)

THE COURT: Court is in session. Be seated.

The Court is in receipt of a note that says, "We have reached a verdict," signed "The jury."

Will the foreman please rise.

Do you have a unanimous verdict on all the issues before you?

JUROR GACH: Yes, we do.

Appendix A

THE COURT: All right. Give it to the clerk, please. (Juror gives verdict form to clerk.)

THE COURT: You can sit down. I'm going to have him read it to us.

All right. Please read the verdict.

CLERK FRANKEL: The verdict form reads:

[3] We, the jury, answer the questions submitted as follows:

"*Plaintiffs' RICO Claims.*

"1. Do you find that any Defendant violated RICO Section 1962(a)?

"A. Defendant, John Z. DeLorean. Answer: No.

"B. Defendant, Ecclesiastes (formerly known as Logan Manufacturing Company). Answer: No.

"2. Do you find that any Defendant violated RICO, Section 1962(b)?

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"3. Do you find that any Defendant violated RICO Section 1962(c)?

Appendix A

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"4. Do you find that any Defendant violated RICO Section 1962(d)?

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"*Plaintiffs' Fraud Claims.*

"5. Do you find that any Defendant committed fraud or intentional misrepresentation?"

As to "John DeLorean. Answer: Yes."

As to "Ecclesiastes. Answer: Yes."

[4] "*Plaintiffs' Breach of Express Contract.*

"6. Do you find that any Defendant breached an express contract with Plaintiffs?"

As to "Jonn DeLorean. Answer: Yes."

As to "Ecclesiastes. Answer: Yes."

"*Plaintiffs' Breach of Implied Contract Claims.*

"7. Do you find that any Defendant breached an implied contract with Plaintiffs?"

This is left blank.

MS. NADLER: That's correct.

THE COURT: That's right.

CLERK FRANKEL: *"Plaintiffs' Account Stated Claims.*

"8. Do you find that any Defendant is liable to Plaintiffs by virtue of an account stated?"

As to "Defendant John DeLorean. Answer: Yes."

As to "Defendant Ecclesiastes. Answer: Yes."

"*Plaintiffs' Quantum Meruit Claims*

"9. Do you find that any Defendant is liable to Plaintiffs by virtue of a quantum meruit?"

As to John DeLorean, this is left blank.

And as to Ecclesiastes, this is left blank.

"*Plaintiffs' Unjust Enrichment Claim.*

"10. Do you find that any Defendant is liable to Plaintiffs because they were unjustly enriched?"

As to John Z. DeLorean, this is left blank.

[5] And as to Defendant Ecclesiastes, this is also left blank.

"11. What is the grand total of fees and expenses, if any, to which you find (without any deductions) that Plaintiffs are entitled?

Appendix A

"A. To Plaintiffs against Defendant, John Z. DeLorean." The answer is "$3,427,905.00."

"B. To Plaintiffs against Defendant, Ecclesiastes." Answer: "$1,311,989.00."

"C. Do you find that Defendant, John Z. DeLorean, is also responsible to Plaintiffs for the amount you awarded against Ecclesiastes in subpart B above?" Answer to C is "Yes."

"12. From that amount, what amount, if any, do you find should be deducted because of Defendants' defenses?

"Answer: Zero dollars and zero cents.

"13. What is the total amount that you award Plaintiff for loss of business and income up to present time other than specified in your answer to Question 11?"

Answer for part A: "To Plaintiffs against Defendant, John Z. DeLorean, $600,000.00."

And then part B: "To Plaintiffs against, Defendant Ecclesiastes, Zero dollars and zero cents.

"14. If you find that Plaintiffs will sustain loss of business and income in the future, give the total amount of [6] damages that you award Plaintiffs for each of the following years in which Plaintiffs will sustain damages."

Answer:

Part A: "To Plaintiffs against Defendant, John Z. DeLorean:"

1995, the answer is zero.

1996, the answer is zero.

1997, the answer is zero.

1998, the answer is zero.

1999, the answer is zero.

2000, the answer is zero.

2001, the answer is zero.

2002, the answer is zero.

And 2003, the answer is zero.

Part B: "To Plaintiffs against Defendant, Ecclesiastes:"

1995, zero.

1996, zero.

1997, zero.

1998 is zero.

1999 is zero.

2000 is zero.

2001 is zero.

2002 is zero.

And 2003 is also zero.

[7] "15. What is the total amount that you award to Plaintiffs for punitive damages?

"A. To Plaintiffs against Defendant, John Z. DeLorean." The answer is "$5 million."

"B. To Plaintiffs against Defendant, Ecclesiastes." The answer is "zero."

And the verdict form is signed by the foreperson.

THE COURT: Please poll the jury. Is there a request for a poll?

MR. FLESHMAN: Yes, there is, Your Honor.

THE COURT: Please poll the jury.

CLERK FRANKEL: Cynthia Ann Johnson, was that and is that still your verdict, as stated in the record?

JUROR JOHNSON: Yes.

CLERK FRANKEL: Danny Raye Hawes, was that and is that still your verdict, as stated in the record?

JUROR HAWKS: Yes.

CLERK FRANKEL: Denise Michelle O'Rourke, was that and is that still your verdict, as stated in the record?

JUROR O'ROURKE: Yes.

CLERK FRANKEL: Janet Carol Driscoll, was that and is that still your verdict, as stated in the record?

JUROR DRISCOLL: Yes.

CLERK FRANKEL: Susan Marie Perry-Nolte, was that and is that still your verdict, as stated in the record?

[8] JUROR PERRY-NOLTE: Yes.

CLERK FRANKEL: Mariette L. Maleszyk, was that and is that still your verdict, as stated in the record?

JUROR MALESZYK: Yes.

CLERK FRANKEL: Linda Pearl Flowers, was that and is that still your verdict, as stated in the record?

JUROR FLOWERS: Yes.

CLERK FRANKEL: And Steven J. Gach, was that and is that still your verdict, as stated in the record?

JUROR GACH: Yes.

THE COURT: Thank you very, very much. You all worked

very hard and paid close attention to all the evidence and the instructions. Thank you very much.

At this time, you are discharged and dismissed.

Step into your room before you leave in case something is on somebody's mind. But you are discharged and dismissed, and tell Jeanne Burgess downstairs.

JURORS: Thank you.

THE COURT: Thank you so much.

(Jury leaves the courtroom at 10:42 a.m.)

THE COURT: Does anyone have anything that must be resolved before we discharge the jury?

(Applause heard coming from the jury room.)

MR. MORGANROTH: I think they had something to say.

MR. FLESHMAN: Your Honor, may I inquire as to what [9] the local customs, practices or rules are about contact of the jury after they are discharged?

THE COURT: Oh, I think you are each free to talk with them.

Is that all?

MR. FLESHMAN: That's all.

Appendix A

THE COURT: All right. And you are free to look at the verdict form.

But maybe you should, you know, thank them or whatever before they leave, because I'm going and tell them they can go right now.

So let them see the verdict form before you send it downstairs. Staple it together and send it downstairs to file. (Proceedings adjourned at 10:45 a.m.)

STATE OF MICHIGAN

ss.

COUNTY OF WAYNE

I, Denise A. Mosby, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/ Denise A. Mosby
DENISE A. MOSBY, CSR-RPR
Official Court Reporter

Dated: January 12, 1995

APPENDIX B — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 22, 1994

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Docket No.
93-CV-70848 DT

Detroit, MI
9-22-94
9:00 a.m.

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DE LOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE, and a jury

* * *

Appendix B

[116] Q. Your name, sir?

A. Frank Shaler.

Q. And, sir, are you the accountant for John DeLorean?

A. I've just prepared tax returns.

Q. So you do work for John DeLorean? You do tax returns for him?

A. Yes.

* * *

[118] * * *

Q. Now, sir, during the course of the years, did you prepare certain financial statements for John DeLorean?

A. Yes.

* * *

[121] Q. Okay. Let me take that from you for the time being. Let me show you Exhibit 155 and ask you whether or not the first page of that particular exhibit is a letter from you?

A. Yes, it is.

Q. And the second page, what is that?

A. It's a draft of a financial statement.

Q. Now, dated January 18th, 1993, did this come from your records, sir?

A. Looks like my writing on it, yeah.

MR. M. MORGANROTH: I would offer Exhibit 155 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, sir, it reads January 18th, 1993, do you see that, sir?

A. Yes.

Q. Says, "I have prepared your personal financial statement as of January 15, 1993 from the data you sent to me and it is enclosed." Addressed to Dear John, is that correct?

A. That's right. Correct.

Q. Now you see on the bottom it says, "Frank, [122] this sounds too much like a disclaimer. Would you mind rewording it something like this? Says the same thing but more softly. Dear J., In accordance with your instructions I prepared your personal financial statements as of January 15, 1993."

Who put that on this particular letter?

A. I believe Mr. DeLorean did.

Q. Did he tell you why he wanted you to change your sort of like disclaimer regarding his financial return? Pardon me, his financial statements.

A. No.

Q. On the next page there's a listing of assets.

A. Yes.

Q. And he shows bank accounts of a million five hundred thousand?

A. Yes.

Q. By the way, whose handwriting is this?

A. That's my handwriting.

Q. Where did you get the information from to put these things down?

[123] A. Might have been a telephone call or fax. I don't recall.

Q. Well, who would have told you? Who would have given you these facts?

A. Mr. DeLorean.

Q. Next item is, "notes receivable from the sale of Logan Manufacturing Company, two million eight hundred fifty thousand dollars." Who gave you that information?

A. I believe Mr. DeLorean.

Q. The next is "preferred stock from sale of Logan Manufacturing, four million five hundred thousand dollars," who gave you that fact?

A. Mr. DeLorean.

Q. Next is "real estate, land and buildings at Logan, Utah," with other explanations about it, "two million five hundred thousand dollars," who gave you that figure and that statement?

A. Mr. DeLorean.

* * *

[126] * * *

Q. What is Number 2 item? I can't quite read that. Can you read what you put down there?

A. "Can't balance rental properties paid in —"

I can't read the rest of it. Looks like "different amounts of rent."

Q. Tell me, sir, this Paragraph 5, says "legal fees payable." Now, were you asking a question of John DeLorean what legal fees he owed?

A. Yes.

Q. Why were you asking him that in 1993?

A. Well, I was trying to prepare a financial statement for him.

Q. In the past Mr. DeLorean carried on his financial statement owing appreciable amount of legal fees, didn't he?

A. I don't recall. If you showed me one, I could maybe.

Q. Okay. I won't put it in yet, but let me show you Exhibit 136 and ask if he shows — if that refreshes your memory he showed he owed two million five in legal fees in 1991?

A. It does.

Q. Didn't you ask him what happened to all the [127] legal fees, to all these legal fees, did you pay them? Didn't you ask him that?

A. No.

Q. Well, you asked him about the legal fees, didn't you? Weren't you asking him what happened to those legal fees?

A. I was asking whether he owed any at the present time.

Q. And he told you how much that he owed in legal fees in 1993 to any lawyer in the world?

A. From the notes there, apparently said zero.

Q. Um-hmm. Tell me, had you ever had any discussions — strike that.

Appendix B

You've had discussions with Mr. DeLorean that he owed Thomas Kimmerly a lot of money, didn't you?

A. I don't believe so.

Q. Never had discussions where Mr. DeLorean told you he owed Thomas Kimmerly legal fees?

A. No.

Q. Now, sir, let me show you the exhibit I just showed you which is 136 and ask you whether or not you prepared that financial statement for Mr. DeLorean?

[128] A. Well, there's really two statements here. There's a typed one.

Q. Um-hmm.

A. Which apparently was a copy of one I provided to him, and then I was changing it to try to prepare a later financial statement.

Q. Are you saying that there's one statement but writings over that statement?

A. Yes.

Q. Just one statement but then lined through, then amended somehow? Is that what you're saying, sir? You see where it says December 31, 1990 at the top?

A. Yes.

Q. And you see where it's changed to December 1991?

A. Yes.

Q. Now, sir —

MR. M. MORGANROTH: I'll offer Exhibit 136 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

* * *

[141] * * *

Q. Let me show you Exhibit 156 and ask you if that's a December 31, 1990 financial statement of John DeLorean?

A. Yes, it is.

Q. Did you prepare it?

A. Yes.

Q. Do you see where it says legal fees payable to $2,500,000?

A. Yes, um-hmm.

* * *

Appendix B

[142] * * *

Q. (BY MR. MORGANROTH): Now, was it the procedure that Mr. DeLorean would send to you the previous financial statement that [143] you had prepared for him and sent it back with notes on it changing the figures as he saw — understood it to be changed and sent it to you and then you typed out the new financial statement with the new figures in it?

A. No. That's not the way I recall, no.

Q. Well, how was it done then?

A. Well, he might send me a note saying that different — there's different amounts for different categories at this time. We might do it by telephone. Some cases he might have crossed out some figures on a prior statement and put in new figures.

Q. Either way, those figures came from him, is that correct?

A. That's right.

Q. Let me show you Exhibit 141 and ask you whether that comes from your records.

A. Yes. I believe it does, um-hmm.

Q. And it's regarding John DeLorean again, is it not?

A. Yes.

MR. M. MORGANROTH: I'd offer Exhibit 141 into evidence, Your Honor.

Appendix B

[144] THE COURT: Any objection to 141?

MR. FREIDBERG: Can't seem to find my copy.

Could I ask you what the Exhibit was?

THE COURT: Show counsel.

MR. M. MORGANROTH: It was Exhibit Number 11 in Frank Shaler's deposition if that's what you're looking for.

MR. FREIDBERG: That's fine. I have no objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Mr. Shaler, would you read the paragraph at the top of this statement?

A. "Frank Shaler, please do new financial statement as of January 15th, 1993. We may be doing development deal on farm which would raise the value considerably. I think I am going to sell." I can't make out the next word.

Q. Can you read the word patents?

A. Yes. "Sell some patents" maybe.

* * *

[163] * * *

Q. Let me show you Exhibit 59 — pardon me, 159, and ask you whether or not that's a final of a financial statement for January 15, 1993 for John Z. DeLorean?

A. I believe it is.

Q. And did you prepare that, sir?

A. It looks like it, yes.

MR. M. MORGANROTH: I would offer Exhibit 159 into evidence, Your Honor.

MR. FREIDBERG: No objection, Your Honor.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Mr. Shaler, not to go through the same figures again, for identification purposes, this is the final of the one that had the work sheet for January 15, 1993 that shows the $51,000,000 net worth, is that correct?

[164] A. This one shows a 51,000,000 net worth, yes.

Q. And this is the final of the one that you identified before as a work sheet that had $51,000,000 net note worth, is that correct?

A. Well, let me see the work sheet. This one?

Q. Is that correct, sir?

A. Yes, that's correct.

Q. And that's the one that no longer has the $2,500,000 owed to attorney fees on it — for attorney fees on it, is that correct?

A. It has no liabilities for attorney fees.

Q. Now, sir, let me show you Exhibit 144 and ask you if that's a final — excuse me, if that is a financial statement of November 30, 1990 —

A. Yes, it is.

Q. — that you prepared?

A. Yes.

* * *

[187] * * *

Q. And then you have below it, January 15, 1993, is that what it says?

A. Yes.

Q. And you cross out November 30, 1990, is that correct, sir?

A. Yes. I was just taking an old copy of the 1990 letter and making one up for the secretary for 1993.

Q. You see where it says below, "I have prepared your personal financial statement as of January 15, 1993 from the data you sent to me and it is enclosed?" Do you see that, sir?

A. Yes.

Q. Let me show you Exhibit — let me show you Exhibit 170 and ask you whether or not those are notes that you took regarding John Z. DeLorean?

A. Looks like I made up some questions before I prepared the financial statement as of January 15th, 1993 and called Mr. DeLorean and asked him the questions.

Q. What's the exhibit number on that, sir?

A. 170.

[188] MR. M. MORGANROTH: Court please, I would offer Exhibit 170 into evidence.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, at the top left it says "call J.Z.D.," something to that effect, is that correct?

A. Yes.

Q. January 15, 1993?

A. Yes.

Q. You asked him these questions six of them?

A. Apparently.

Appendix B

Q. Says J.Z.D. questions?

A. Yes. Sometimes I don't ask him all I write down originally.

Q. You don't write down everything you ask him, is that right?

A. Sometimes by the time I get to the telephone — this was written on the 8th of January and I didn't call him until the 15th. Some of them — I don't see an answer after the first one, for instance, so maybe it didn't appear pertinent by the 15th.

Q. Number 1 is the purchase of Logan — pardon [189] me, purchaser of Logan retaining its name, do you see that question?

A. Yes.

Q. So you knew Logan Manufacturing was closing, sale was being closed, Logan Manufacturing's assets in January of 1993, is that correct?

A. Yes.

Q. Tell me, didn't Mr. DeLorean tell you that Mayer Morganroth was supposed to be paid his legal fees out of that closing?

A. No.

Q. Well, do you see where you asked Number 4, loan from brother, zero?

A. Yes.

Q. Didn't you ask him what happened to that loan?

A. No. I just asked him how much it was. How much he owed him as of January 15th, 1993. I'm just preparing a balance sheet. I wasn't preparing anything else.

Q. Well, he had already sent to you a proposed financial statement showing he owed his brother nothing, didn't he, before you asked him these questions?

A. I don't recall. Maybe in one of these [190] prior.

Q. Sir, Mr. DeLorean sent to you a financial statement prepared by him with notes, the changes, and he left out owing his brother any money? Isn't that why you called him and asked him what happened to the loan?

A. That apparently is why I called and him ask him, yes.

Q. And, sir, didn't you next ask him what happened to the legal fees you owed of two and a half million dollars?

A. No. I just asked him if he was sure it was zero.

Q. Because just matter of a few months before, whatever it was, he showed he owed $2,500,000, is that right?

A. Probably.

Q. And you never saw a check in any of his records?

A. I don't see any checks anyway.

Q. You never saw a check register showing he had paid that?

A. I hadn't seen any checks or check registers for a year or two before this. This statement was —

[191] Q. The answer is — excuse me, the answer is you never saw any evidence that that money had been paid, isn't that true?

A. That is true.

Q. So you asked him what happened to it, isn't that right?

A. No. Just wanted to make sure it was zero.

Q. And he told you it was zero?

A. Yes.

Q. Now let me show you Exhibit 180 and ask you if you can identify that as a work sheet financial statement that you prepared?

A. It's a work sheet for a financial statement.

Q. Yes?

A. Yes.

MR. M. MORGANROTH: I would offer Exhibit 180 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, sir, do you see where there's a figure for legal fees payable of $500,000?

A. Looks like 2,500,000.

* * *

APPENDIX C — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 23, 1994

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Docket No.
93-CV-70848 DT

Detroit, MI
9-23-94
9:00 a.m.

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DE LOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE, and a jury

* * *

Appendix C

Testimony of Frank Shaler

[10] * * *

Q. (BY MR. M. MORGANROTH): Did Mr. DeLorean ever tell you why he gave you a million dollars to take a deduction for Hufstedler and another million dollars for Weitzman plus?

A. I just received the letter from him.

Q. He goes further and says: "To Howard Weitzman, property, Pauma Valley, four million dollars."

Did he ever tell you why he felt four million dollars should be the amount?

A. No.

Q. Then he puts the Howard Weitzman furnishings and equipment, Pauma Valley, one million dollars. Did you ever see a bill of sale of the furnishings?

A. No.

Q. Now, sir, do you recall the company called Ephesians 6:12, Inc.?

A. Yes.

Q. Was that another company that Mr. DeLorean [11] had?

A. A company that he owned all the stock in, yes.

Appendix C

Q. Do you recall on January 15, 1985, he had a corporate meeting of the sole director and sole secretary of the corporation to pay over to John DeLorean four million dollars?

A. I don't specifically remember it. If you want to refresh my memory —

Q. Certainly, sir.

A. I've read it, yes.

Q. Do you recall that he had such a corporate meeting in order to pay himself from Ephesians four million dollars?

A. Well, it notes that the corporate meeting was in Vale, Colorado. I wasn't there.

Q. Yes, sir, but you have a copy of the minutes in your —

A. Yes.

Q. And you received that from Mr. DeLorean, did you not?

A. Yes, I did.

Q. And actually from Ephesians, he did transfer a great deal of money, did he not, in 1985?

A. Well, I know there was some money transferred. [12] I don't recall any of the details at the moment. If you have anything to refresh me —

Q. You don't know if it came out to four million dollars, is that right?

A. That's right.

Q. But you knew there was quite a bit of money transferred, is that right?

A. Well, you'd have to refresh my mind on it. I don't remember that far back.

Q. Well, let's take one item alone. In that particular document if it refreshes your memory, he transferred all the monies coming from his book rights, is that correct?

A. Well, the corporation is buying the rights for the book from Mr. DeLorean, according to this, these minutes, yes.

Q. And the monies are being turned over to Mr. DeLorean, up to four — or four million dollars worth, isn't that true, sir?

A. I think it says — let me see what it says again.

Q. Do you see where it says it pays four million dollars to Mr. John Z. DeLorean?

A. It says shall pay.

Q. [13] Shall pay?

A. Yes.

Q. Do you know if Ephesians got somewhere around a

million dollars as a down payment on this book that was transferred to Mr. DeLorean right away?

A. I know they got something. Without something to refresh my memory, I wouldn't know how much it was.

Q. Do you know he got royalties after he got his down payment from the book?

A. Well, Ephesians owned the rights and they got royalties as I recall.

Q. It also says John Z. DeLorean would draw a salary of $60,000 a month from Ephesians on top of the four million. Do you know whether he did that or not?

A. I don't think he did, no.

Q. You don't know if he — are you sure he didn't?

A. Pretty sure.

Q. But he did draw a great deal of money?

A. On just the royalties he drew.

Q. Pardon?

A. I think he just drew the royalties out of [14] there.

Q. And the royalties was a lot of money, wasn't it?

A. It's — I don't remember. Might be a million bucks, yeah.

MR. FREIDBERG: Your Honor, we'd like to object to "a lot of money." If he asks him how much money —

THE COURT: Sustained.

MR. M. MORGANROTH: He just answered, your Honor, and he said at least a million bucks.

THE WITNESS: That's my recollection.

MR. FREIDBERG: I'll stipulate that's a lot of money.

THE COURT: Apparently it's all relative.

MR. FREIDBERG: That's true.

MR. M. MORGANROTH: Yes, your Honor.

Q. (BY MR. M. MORGANROTH): Do you recall Mr. DeLorean in 1988 conveying to himself the assets of Cristina Holdings of $1,360,000?

A. You'd have to refresh my memory. I don't [15] have any recollection.

Q. Let me show you a February 1, 1988 meeting of the board of directors of Cristina Holdings Corporation.

A. It states that the remaining inventory in Cristina Holdings is being conveyed to Mr. DeLorean in payment of an account payable to him.

Q. How much money?

A. Well, since it says — it says $1,360,000 but it refers to an inventory so somebody had to place that value on it, I would think.

Q. Do you know that — do you place values of Cristina Holdings assets from year to year according to your records?

A. Did I?

Q. Yes, didn't you?

A. I don't think so.

Q. You don't think so. Cristina Holdings actually was a corporation that owned a great deal of art, antique furniture, and a valuable collection of all kinds of, shall we say, art and furniture?

A. Antiques.

Q. Antiques?

[16] A. Mm-hmm, yes.

Q. And in fact Mr. DeLorean had a gentleman by the name of Maur Dubin practically employed full-time acquiring those things, isn't that true?

A. Well, he ran the store they had, I believe.

Q. They had a store. What kind of store did they have?

A. Antiques store, as I understood, and art.

Q. When did Mr. DeLorean have an antiques store?

A. When this corporation was in business. I think it was in the early eighties.

Q. Is that where all that $1,360,000 comes from that's assigned to him, from the antiques store?

A. Yeah. He loaned money to the company to buy items and this is paying back for what he's loaned them.

Q. So that's money he wouldn't show on his tax return?

A. You don't show loans on a tax return.

Q. Exactly. So it's more income that he was getting during that time that —

MR. FREIDBERG: Your Honor, [17] I'm going to object to the "more income." He hasn't said that. He said you don't show it on your income tax return because it's not income. So he's asking an improper question.

MR. M. MORGANROTH: Sir —

MR. FREIDBERG: He's assuming a fact not in evidence.

THE COURT: Sustained.

Q. (BY MR. MORGANROTH): Not taxable income, is that right?

A. Not income at all. I would think it was repaying a debt.

Q. What it is then is monies that were distributed to him for his use during 1988, is that correct, sir?

A. I'd say just his debt was paid.

Q. Let's put it very simply. He got $1,360,000 in 1988 from that instrument and from Cristina Holdings Corp., right?

A. That's a —

MR FREIDBERG. Your Honor, I'd like to object. He's already indicated that he got the inventory. Mr. Morganroth is not saying that he got the money. He's [18] misstating that and assuming facts not in evidence and not what this witness has testified to.

THE COURT: Sustained.

Q. (BY MR. M. MORGANROTH): Sir, did Mr. DeLorean sell the Cristina Holdings inventory for three million dollars in the last year?

A. Last year?

Q. Two years; how's that?

A. 1993 and '94?

Q. 1993 and 1992. Let's take those two years.

A. I don't know. I —

Q. You didn't know that upon sale of his apartment in New York, his co-op, that he held a sale from all of the houses in New York by Sotheby's selling the furniture and inventory from Cristina Holdings?

MR. FREIDBERG: Your Honor, he's asking a question as if he didn't know. The question is what does he know.

Q. (BY MR. M. MORGANROTH): All right, sir. Do you know that? How's that?

A. I know he had a sale of some furniture that was in his apartment, yes.

* * *

[35] * * *

Q. Excuse me. I thought you just testified a little while ago that you knew of that sale of his antiques?

A. Well, I know of the sale of the co-op apartment. I don't recall — maybe I assumed I knew of the sale because he'd have to get rid of the furniture somehow, but I don't know anything specifically about the sale of furniture.

Q. Okay. Did you ever question Mr. DeLorean about a statement that he made to you that he had somehow sold his furnishings at the Pauma Valley Ranch to Howard Weitzman?

A. He told me he sold the — they went to him in connection with his fees.

Q. The furnishings?

A. The furnishings, yes, mm-hmm.

Q. Did you ever say to him you have no bill of sale?

A. No, I never did.

Q. Let me show you your notes, see if that refreshes your memory that you asked him why no bill of sale?

[36] A. Well, these were some notes I made when I was probably preparing the return. I don't see any reference to the fact that I called and asked him these questions.

Q. You wrote down there, did you not, "Why no bill of sale?"

A. Yes, one of the notes I made going through the data I had when I was preparing the return, mm-hmm.

Q. Was it that Mr. DeLorean took the position that somehow the furnishings were gone, he didn't know how, that he should get a deduction because it was part of an attorney's fee for a million dollars he gave to Howard Weitzman in furniture, isn't that true?

A. That's my recollection that he thought the furnishings went with the home to Howard Weitzman.

Q. And he wanted you to deduct that as part of an attorney fee beyond two and a half million dollars, beyond the four or five million dollars we've already been discussing because he

says the furnishings that were missing, somehow he gave to Howard [37] Weitzman, isn't that true?

A. He believed he'd given them to Howard Weitzman and that possibly they should be part of the cost basis for the sale.

Q. And you questioned why no bill of sale, isn't that right?

A. Well, just among a lot of notes I made at the time I was looking over the records. I believe I later found out that they were in the house when it was turned over to Mr. Weitzman so I concluded I didn't need a bill of sale.

Q. You concluded that?

A. Yes.

Q. Did you write that off as an attorney fee to Howard Weitzman, furniture that was missing from Pauma Valley?

A. I believe the return shows the Pauma Valley real estate and furniture on the property and equipment went to Mr. Weitzman for an attorney fee.

Q. Did you ever ask Mr. Weitzman whether he ever got the furniture?

A. I could never get to talk to him. I'd call him and he never returned my call.

[38] Q. Really. Did you ever write him?

A. Yes. No answer.

Q. And you asked that question?

A. No, I didn't ask that question.

Q. In fact, it was Mr. DeLorean's position the furniture had been stolen and therefore it was Mr. Weitzman's responsibility and he got another million dollars because the furniture was stolen out of the place, isn't that correct?

A. Not that I know of, no.

Q. All right, sir. Mr. Shaler, do you remember Mr. DeLorean writing to you in his own handwriting and giving you a list of the furnishings at Pauma Valley which disappeared or went with the sale? Do you remember that?

A. Yes.

Q. Do you recall calling Mr. DeLorean May 24, 1990 —

A. Specifically?

Q. Yes, and asking him for the cost amounts and appraisal of those items? Do you remember that, sir?

A. How would I? Please.

* * *

[41] * * *

Q. This was another million dollars in 1990 that Mr. DeLorean was asking you to deduct?

A. I don't recall ever separating that from the house.

Q. I see. And in 1990 — let's mark this.

(Exhibit 954 was marked for identification)

Q. (BY MR. M. MORGANROTH): This is the appraisal and the note from Mr. DeLorean that you received in 1990 where you make your note May 24, 1990. Is that correct, sir?

A. Yes.

MR. M. MORGANROTH: I would offer Exhibit 954 into evidence, your Honor.

MR. FREIDBERG: I have no objection.

THE COURT: Received.

(Exhibit 954 was received into evidence)

Q. (BY MR. MORGANROTH): For the record, [42] this is on J. Z. DeLorean's notepad. Would you read the page into evidence?

A. "Frank Shaler: This is a list of furnishings at Pauma Valley acquired over the years. I have circled those sent to me. The rest just plain disappeared or went with the sale."

And I made a note — there was no date on that. I made a note below that dated May 24th, 1990, "I called JZD, Mr. DeLorean, and said I need cost amounts, not appraisal amounts. He said he did not know costs." I can't read the next word. "Purchased over a number of years. I asked if they came from Cristina Holdings and he said no. I suggested estimating the cost and he said we might use 50 percent of appraised figures."

Q. And, sir, you left out one thing when you read that. You left out the parentheses. It says: "I have circled those sent to me. The rest just plain disappeared (or went with the sale.)"

A. Correct, mm-hmm.

Q. There's parentheses, sort of an afterthought, [43] "or went with the sale," isn't it?

A. Well —

MR. FREIDBERG: Your Honor, I'm going to object. He's asking now for the conclusion of the writer who put parentheses as an afterthought.

THE COURT: Sustained.

Q. (BY MR. M. MORGANROTH): Tell me, sir, furnishings were shipped to Mr. DeLorean, were they not, from Pauma Valley?

A. Not that I know of.

Q. Well, he's saying the circled ones he had shipped to him?

A. Well, apparently some of them, yes.

Q. Maybe all of them, sir?

A. Not that I know of.

Q. Did Mr. DeLorean ever tell you that his brother Charles had a lien on the furnishings at Pauma Valley?

A. No.

Q. See if this refreshes your memory. By the way, it's in your handwriting, is it not?

A. No, it's not my handwriting.

Q. Okay. Is that part of your records, sir?

A. Apparently.

* * *

[95] * * *

Q. Well, yes, I want to know what you recall, yes. That's fair game.

A. I recall that I was presented a listing showing some payments made by Cristina Holdings to Mr. DeLorean and I said that it looked as if they were making — they paid these expenses and because — and they were in effect paying off a loan that he had made to Cristina Holdings by paying those expenses of his.

Q. Was it your understanding that they conveyed to him assets of Cristina Corporation to pay off the loan?

MR. M. MORGANROTH: Objection, your Honor. I'd like to know who "they" is.

MR. FREIDBERG: Cristina Corporation.

Q. (BY MR. FREIDBERG): Was it your understanding that Cristina Holding Corporation owned by Mr. DeLorean transferred assets to him in payment of the loan?

A. I don't believe I have any knowledge of anything like that.

* * *

APPENDIX D — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 28, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION NO. 93 CV 70848 DT

MORGANROTH & MORGANROTH, a Michigan partnership, and MAYER MORGANROTH,

Plaintiffs,

v.

JOHN Z. DELOREAN, and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing, a Delaware corporation), jointly and severally,

Defendants.

JURY TRIAL PROCEEDINGS
AM SESSION

BEFORE THE HONORABLE ANNA DIGGS TAYLOR
United States District Judge
737 US Courthouse & Federal Building
231 Lafayette Boulevard West
Detroit, Michigan
Wednesday, September 28, 1994

Appendix D

APPEARANCES:

MAYER MORGANROTH, ESQ.,
JEFFREY MORGANROTH, ESQ.,
ELEANOR NADLER, ESQ.,
In behalf of Plaintiffs.

STANLEY FLESHMAN, ESQ.,
In behalf of Defendants.

* * *

Testimony of Walter Keating

[74] * * *

Q. Now, sir, are you a client of mine?

A. Yes.

Q. And, sir, who referred you to me or recommended me to you?

A. John DeLorean.

Q. And when did he recommend me to you for you to use me [75] as your attorney?

A. In April 1991 or thereabouts. April 15th or thereabouts.

Q. How long had you known John DeLorean before April 1991?

A. Since he was General Manager of Chevrolet.

Q. How many years would that be?

A. 20 years ago, I think.

Q. Did you consider yourself —

A. I knew him before that. I knew him when we were kids.

Q. Did you consider yourself a friend of his?

A. Yes.

Q. Tell me in April of 1991, when Mr. DeLorean recommended that you contact me to become your attorney, was that over a telephone or in person that he did that?

A. Well, when he heard that I had a problem, a very serious personal problem, he called me and he said, Walter, I think you ought to think very seriously about getting some really — the best representation that you can get.

And he says the best legal mind that I know in the United States is Mayer Morganroth.

And I took his advice and hired you.

Q. Did he say anything else regarding whether or not Morganroth had represented Mr. DeLorean?

A. He said, yes, you were the basis of all of his— [76] solving of all of his personal problems and his business asset problems.

Q. And tell me, can you remember anything else he said at that time?

A. Other than to say that he was in the habit of contacting you, Mayor Morganroth as often as possible preferably I'm talking on business matters, preferably on a daily basis, to make sure that you were going in the proper direction.

And I found that to be very good advice, as a matter of fact.

Q. Tell me, sir, did you hire Mayer Morganroth to represent you?

A. Yes, I did, happily.

Q. And, sir, was there an hourly fee arrangement made with you?

A. Yes.

Q. And what was that hourly fee?

A. $400 an hour.

Q. And did we ever reduce that to writing or make a written contract of it?

A. Not that I know of.

Q. Tell me, sir, after Mayer Morganroth began to represent you in the problem as you related before, was that a litigation or trial?

[77] A. Yes.

Q. And did you hire Mayer Morganroth after that, after that trial was over for other matters?

A. Yes, I did.

Q. Is he still your lawyer in matters in litigations?

A. Yes, he is.

Q. Tell me, sir, did you ever talk to Mr. DeLorean after the first time that he recommended Mayer Morganroth and discuss —

A. Many times.

Q. — was there any discussions between you and Mr. DeLorean as to Mayer Morganroth?

A. Yes, he reiterated his position that I'd do very well to contact Mr. Morganroth on a daily basis in order to keep my business on the straight and narrow and it was very good advice.

Q. When was the last time Mr. DeLorean told you that?

A. Let me see. Several times in '92. And I see — I see John all the time.

Q. Tell me, did Morganroth and you ever come to any conclusion as to what should be done regarding billing and time sheets?

A. Yes.

Q. What would be done with time sheets after we agreed that on a particular billing?

[78] A. It was recommended to me that when we get our billing, there will be a time sheet connected to it.

And that what we should do in order to get out of the possibility of having the record being part of the — any lawyers thing that he can come in and depose, that we destroy it and just have the cover sheet that shows the amount of the total bill.

Q. And, sir, have you agreed to and paid every bill as submitted to you during the last — since 1991?

A. Yes, sir. Not only that, but I do the same thing with other lawyers now.

* * *

[84] Q. And you testified that you were informed or recommended to you that the time sheets be destroyed; is that right?

A. Yes.

Q. That's the time sheets recording the time spent by your attorney?

A. Yes.

Q. That recommendation was given to you by Mr. Morganroth?

A. Yes, to protect them from discovery.

Q. You have no written contract with Mr. Morganroth?

A. No, no.

Q. The criminal case, was that on an hourly basis or flat fee?

A. Hourly. When you say "flat fee", you mean he sent me a bill for a flat amount?

Q. Yeah.

A. No, hourly.

Q. How do you know how many hours he put in?

A. It was on the sheet.

Q. So you actually saw some sheet at sometime that had —

A. Yes.

Q. — a representation of the hours and time?

A. How many hours, right.

Q. Would it say something — little time sheet that says [85] first day of trial whenever that was.

The trial was in July of 1991, correct?

A. Yes.

Q. Okay. So he gave a time sheet that says July 21, 1991 trial appearance two hours, three hours whatever?

A. Uh-huh.

Q. Correct?

A. Yes.

Q. And you could compare that time sheet to your memory as to what happened on that day which you saw Mr. Morganroth do?

A. Correct.

Q. And you — did you go through all those time sheets?

A. I sure did.

Q. You when through everyone of them?

A. Yes, sir.

Q. It wasn't until after you went through every one of those time sheets and verified to your own personal knowledge that the time had been spent that you agreed to the bill; is that correct?

A. You mean he sent me a whole bunch of them at once, is that what you're saying or as he sent me the bills?

Q. As he sent you the bills you went through the time sheets?

A. One time sheet; with it that says how much time he [86] spent on each thing.

Q. As far as like the back up documents, if there were any?

A. There were none that I know of.

Q. You never saw any of those?

A. Just time break down.

Q. The time break down came in some kind of letter?

A. Mayer Morganroth spent so much time at $400 an hour.

And one of the other people in his office spent so much time at so much an hour if they were there, you know. And that's the way the time sheet worked out.

Q. Okay. But did the time sheet — whatever we want to call this document, did it say spent four hours on such-and-such a day doing such-and-such a thing?

A. I don't think he brought it down that close, but I'm not sure.

Q. Did you ever see any such document that documented how much time Mr. Morganroth spent on a particular day do doing a particular task?

A. Yes.

Q. What was it?

A. The piece that was connected to the cover sheet, you know, which is the bill, the statement. That's what I'm looking, for the statement.

Q. Excuse me. What was your understanding of what was [87] being destroyed?

A. The hourly rate. Not the hourly rate, but the hours spent by each individual person and where it was.

Q. Was that some document that you actually had seen at some point in time?

You saw it and said, okay, you can destroy this now?

A. We did.

Q. Okay. You saw it and approved it and then allowed it to be destroyed; is that right?

A. Or agreed with it, yes. I never had to disagree with any one of his statements.

Q. Now for the criminal case in 1991, how long did that take to try?

A. I would say three weeks.

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Q. You had Mr. Thomas Kinney, Mr. Robert Forest, Mr. Morganroth present?

A. Yes. Mr. Morganroth was the lead attorney for that.

Q. When you say "lead attorney", was he the one that got up, did the opening statement, closing arguments?

A. No, no. He was the lead attorney on the — when you get to the — to the opening statement and stuff, my heavens, all the work is done.

You know, all that stuff that he had to go through before, that was unbelievable.

* * *

Testimony of Alfred Rapetti

[91] Q. And back in 1975, and thereafter, did you have any business dealings with Mr. DeLorean?

A. Yes.

Q. When you first start being involved with Mr. DeLorean regarding business dealings —

A. There was some involvement in the mid 70's far as the car company was concerned.

Then there were no dealings from the mid 70's to 1987 when I met with him and we had discussion as to possible sale of some of his assets.

Q. When was that meeting, if you recall?

A. Probably in May, June 1987.

Q. Did you undertake to do some work regarding selling some of his assets?

A. Yes.

Q. And did you after that time, meet with him and talk to him fairly regularly?

A. Yes.

Q. And did you attempt to sell any of his assets?

A. Yes.

Q. Did you attempt to get him any financing on any of his assets as well?

A. Yes.

Q. Did there come a time when you met Mayer Morganroth?

[92] A. Yes.

Q. And when was that, if you recall?

A. I believe the first time was at one of the hearings in Detroit. No, I'm sorry. It was before that because it was — had

to do with the restraints that the — that DSQ put on the company.

Q. Now, sir, in 1987–1988, you were working to get the sale of Logan Manufacturing or other assets of Mr. DeLorean's; is that correct?

A. Yes.

Q. You would know that Paul Wallace transaction because you actually negotiated it; isn't that true?

THE READER: I'm sorry. I'm not sure where you are.

MS. NADLER: I went to page 10.

A. Yes.

Q. You were the moving party that did all the negotiations as far as the business negotiations back and forth with Wallace in order to purchase the assets of Logan Manufacturing, correct?

A. Yes.

Q. Also with the Logan manufacturing sales that took place, Mr. Wallace, John DeLorean, was allowed to keep certain assets; is that not true?

A. Yes.

[93] Q. In any event, over the span of 1987–88–89 and '90 and '91 and 1992, were there many offers to Mr. DeLorean to purchase Logan Manufacturing?

A. Yes.

Q. And did you — could you quantify how many?

A. During that period of time, there were probably on a serious basis, probably eight.

Q. Okay. When you say a serious basis, there were also numerous others that —

A. Yes.

Q. — that were offered? Okay.

Would you say there were offers exceeding 20 or 30 of them that were submitted —

A. Probably.

Q. — to Mr. DeLorean?

Tell me when you get to the serious basis you mean that the offer that was submitted that Mr. DeLorean started to consider signing; is that correct?

A. Yes.

Q. Tell me, could you control Mr. DeLorean and advise him whether or not a deal was good or bad?

A. I gave the advice, but it was always his decision.

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* * *

[112] Q. Tell me, sir, do you have an understanding that Mr. DeLorean of Logan Manufacturing owed Mayer Morganroth a substantial amount of fees as of January 5, 1993?

A. It was my understanding there was a substantial amount of fees that were owed, yes.

Q. And that was something that was supposed to be paid after the closing according to the agreement of Mr. DeLorean and myself, Mr. Morganroth, that you understood; is that correct?

A. I — I took it for granted that the obligation was going to be paid.

Q. In fact, in order to have the transaction closed with Paul Wallace Mr. Morganroth agreed to subordinate his debt to that closing so as soon as possible the transaction could close; isn't that true?

A. Yes.

Q. And that was under the basis that Mr. Morganroth was owed that money, but would permit Wallace to close without it being an obligation of Wallace to pay Morganroth, correct?

A. Yes.

Q. Mr. Rapetti, do you recall during '87–88, that Mr. DeLorean said these other buyers are getting financing in order to buy the company.

Appendix D

Mr. Rapetti, why don't you get me the financing [113] so I can pay off everybody and get the financing for Logan so I can, keep Logan.

Do you remember him wanting to go that direction?

A. Yes.

Q. Tell me, did you get to see or meet with Roy Nesseth while you were performing services for Logan?

A. I have met him, yes.

Q. Did you ever see him at Logan?

A. Yes.

Q. Did you ever tell John DeLorean shouldn't be there?

A. Yes.

Q. Did Mr. DeLorean listen to you?

A. Sometimes.

Q. But somehow Roy Nesseth always got back there, right?

A. Yes.

Q. Do you remember frantically calling me in December 1992 saying that "Roy Nesseth is back at Logan. He's going to destroy another deal"?

Appendix D

A. Yes.

Q. And do you recall me telling you "I told Mr. DeLorean to keep that man away from there but he never seems to listen to me"?

A. Yes.

* * *

APPENDIX E — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 1, 1994

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-CV-70848-DT

MORGANROTH & MORGANROTH, a Michigan partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11:12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, Jointly and Severally,

Defendants.

TRIAL

Proceedings had and testimony taken in the above-entitled matter before HONORABLE ANNA DIGGS TAYLOR, United States District Court, at Detroit, Michigan, on Thursday, December 1, 1994.

APPEARANCES:

MORGANROTH & MORGANROTH, P.C.
2000 Town Center, Suite 2000
Southfield, Michigan 48075
(BY: MAYER MORGANROTH, ESQ.)

Appendix E

-AND-

KRAMER, LEVIN, NATFALIS, NESSEN, KAMIN & FRANKEL
919 Third Avenue
New York, New York 10022
(BY: ELLEN R. NADLER, ATTORNEY AT LAW)

Appearing on behalf of Plaintiffs.

* * *

Testimony of John Z. DeLorean

[98] * * *

"Q. In August of 1992, you put into your book that you didn't have money to give to me. You didn't put in your book that you weren't paying me because of the fact of some errors, did you? Did you, sir?

"A. I don't know what put in the book.

"Q. You didn't tell me there were any errors that you were claiming in August of 1992, you just told me at that particular time that you didn't have any money right then, isn't that true, it all had to go for DSQ and for money to Logan and for you to live on, and you would pay me when the closing took place.

"A. I never said I would pay you. I said I would handle you or you might have interpreted that.

* * *

APPENDIX F — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 1, 1994

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93-CV-70848-DT

MORGANROTH & MORGANROTH, a Michigan Partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11:12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, Jointly and Severally,

Defendants.

TRIAL

Proceedings had and testimony taken in the above-entitled matter before HONORABLE ANNA DIGGS TAYLOR, United States District Court, at Detroit, Michigan, on Thursday, December 1, 1994.

APPEARANCES:

MORGANROTH & MORGANROTH, P.C.
2000 Town Center, Suite 2000
Southfield, Michigan 48075
(BY: MAYER MORGANROTH, ESQ.)

-AND-

Appendix F

* * *

Testimony of John Z. DeLorean

[43] * * *

"Q. You didn't send me a check for four fifty,

"A. Somebody did get a check for four fifty.

"Q. After Logan paid a portion of the bill they owed me and you paid a portion.

"A. Not a portion. You said it was paid in full.

"Q. I billed you for years after that. Did you ever write one thing to me contesting any of those bills; did you?

"A. Not that I know of.

"Q. And you carried it for two million two in your financial statement, and then two million five in your financial statement owing me personally, didn't you, sir?

"A. Yes, sir. Whatever you told me, I wrote it down.

"Q. This is a bill for December 3rd, 1990, identified as Plaintiff's Exhibit 374, Morganroth & Morganroth, December 3, 1990, Mr. [44] John Z. DeLorean, RE: Fees for services rendered: Balance total including costs, two million five hundred and twenty thousand eight hundred and nineteen dollars, signed Mayer Morganroth. Do you remember seeing that, sir?

Appendix F

"A. No, I don't, but I know I got a lot of bills at different times.

"Q. Did you at any time ever send me a letter that that bill wasn't accurate or correct?

"A. No, I told you on the telephone.

"Q. Sir, did you ever send me a letter saying that wasn't accurate or correct?

"A. No, not that I know of.

"Q. Let me show you Exhibit — by the way, sir, Exhibit 374, December 3, 1990, is almost two months after this settlement was made in front of Judge Rosen with DSQ; isn't that true, sir?

"A. Probably.

"Q. For the record, I will read in Exhibit 447, which was January 15, 1986.

"Dear Mike,

"We begin a new year. Hopefully a year that will see the end of the harassment [45] I'm subject to. I want to thank you for your friendship and support. As one man fighting those giant firms, you've already taken a serious toll!" — with a Capital "T" underlined twice.

"Best wishes for the New Year. May it be your best ever.

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"So then, you still hadn't paid me any money; had you?

"A. You kept on working. You figured I was going to pay.

"Q. Yes, I sure did.

"A. Because you knew I was tied up. I didn't have any money to pay anybody.

"Q. Exhibit 532, is dated May 7, 1991, addressed to Mr. John Z. DeLorean. Sir, do you recall receiving the May 7, 1991, Exhibit 532, bill?

"A. No, I don't recall. I don't recall that, but I know I recall whatever you sent me I put down.

"Q. Put down where?

"A. Whereever we put it down.

* * *

[50] * * *

"Q. For identification, Exhibit 364, this is a letter of December 21, 1992, to John Z. DeLorean, Road One, Lamington Farm, from Morganroth & Morganroth, Mayer Morganroth, and I ask you if you recall receiving this letter, sir?

"A. I don't recall it, but doesn't mean I didn't get it. I just don't recall it.

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"Q. For the record, the letter states as follows:

"Dear John,

"I write to you with respect to a large unpaid balance of legal fees and costs past due and owing to my law firm by Logan Manufacturing and you, and to confirm our telephone conversation today.

"During today's telephone conversation when we again discussed the significant balance owing to my law firm by Logan Manufacturing and you I stressed that my law firm and I really need at least a substantial payment of said unpaid balance to [51] be made in connection with the closing of the Logan Manufacturing assets sale. Nevertheless, based upon your representation that all unpaid invoices owed by Logan Manufacturing and you to my law firm will be satisifed in full on about the end of January, 1993. I agreed to wait until such time for payment.

"In addition, I also agreed during our telephone conversation of today, that I will reduce the balance of the outstanding invoices by four hundred thousand dollars charged for the Cork Gully matter in the event that all amounts owed by Logan Manufacturing and you exclusive of the four hundred thousand dollars are satisfied on or before the end of January, 1993.

"You don't recall this matter, sir?

"A. No.

"Q. If I were to tell you that you had a notation in your journal regarding that letter and the conversation we had would that refresh your memory?

Appendix F

"A. No, but I didn't say I didn't get it. I just don't remember it right now. I [52] get a pile of mail this high every day.

"Q. Tell me, sir, didn't you on December the 20th — December 21st, excuse me — didn't you on December 21st tell me that you were going to pay that bill by the end of January, 1993, the entire bill?

"A. No, I didn't. I said it would be handled. And by that I was in my mind implying that we were going to get this thing straightened out. But that doesn't mean you wouldn't have taken it that way. I'm not denying that.

"Q. Handled?

"A. Yes.

"Q. But you said it would be paid, taken care of; didn't you?

"A. No, I didn't. I never have said that.

"Q. Really. You never said it would be taken care of.

"A. I may have said it would be taken care of meaning the same as handled, handled taken care of, meaning we will sit down and straighten this thing out. And when we do, you will get paid what you're properly owed, [53] and I will get paid by your insurance company.

"Q. When did you say to me at any time you will get paid by my insurance company?

"A. I didn't say that.

"Q. All you said was, after I said if you pay me the entire amount by the end of January you promised that we'd give you a four hundred thousand dollar reduction, do you remember what you said?

"A. No.

"Q. You said I will take care of that. I will be taking care of it prompt; do you remember that?

"A. No, I'm sure I didn't say that.

"Q. Now, sir, I'm going to ask you a question: How did you get Ed Freidberg to represent you in 1990-1991? He did represent you in 1990-1991, didn't he, and '92, didn't he?

"A. I paid him.

"Q. But you didn't pay me any money during that time.

"A. Because I had planned at some time that we would straighten that out.

"Q. By the way, the day after or even [54] the very same day that the closing took place in New York of Logan Manufacturing, you sent a one hundred fifty thousand dollar check to Ed Freidberg, didn't you, as a retainer?

"A. Very soon thereafter.

"Q. What was that for? To sue me?

"A. No, it was to handle you.

"Q. I see. So you could pay him to handle me, but you couldn't pay me for those years.

"A. It was to take care of you.

"Q. I see.

"A. That is what "take care of" means.

"Q. And, sir, when you got the bill in 1992, December, and you got this letter in 1992, you didn't say you disagreed with anything. You said it would be taken care of; isn't that true?

"A. I told you what I meant.

"Q. You told me what I meant. Why didn't you say what you meant was it's too hard for you to tell the truth?

"A. No, it's just not the right time.

"Q. It wasn't the right time to tell the truth?

[55] "A. I did tell you the truth. I told you my version of the truth as oppose to your version.

"Q. The fact is you were afraid that I wouldn't work and get the sales close in Logan Manufacturing; isn't that true?

"A. No, the sale was — when was that? Was it after?

Appendix F

"Q. January 5th, 1993.

"A. What was the date of that thing?

"Q. December 26th, 1992.

"A. I don't recall. I think everything was done by that point in time.

"Q. Couldn't be done. Remember you went there on Christmas Day and you walked out. The deal was aborted and you walked out and there wasn't a deal.

"A. Not because I wanted to change any documents. It was because they hadn't finished their study of the charges against me and they wanted to hold back too much money, and I refused to do that.

"Q. That was January — December if you recall, I seen you on Christmas.

"A. Oh.

[56] "Q. Do you remember now I seen you on Christmas because they said there was no deal any longer because they couldn't come up. And by the way and by 'they' I'm taking about the purchaser, Wallace, could not come up with the extra million dollars as a down payment rather than the five hundred and seventy-five; as you recall that?

"A. Just vaguely.

Appendix F

"Q. Do you remember I flew in on Christmas Day and sat with Wallace's attorney, Howard Petty, and we worked the entire" — "with Wallace's attorney and with Howard Petty, and we worked the entire day into the evening and we contacted the bankers at home in Utah wherein I convinced the bankers to make the payment they were going to make in a year from then, right, so they could" — "so that the price could go up to five million seventy fifty as long as your down payment or else the deal was a no go; do you remember that?

"A. No, but it's possible.

* * *

APPENDIX G — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 6, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION
No. 93-CV-70848-DI

MORGANROTH & MORGANROTH, a Michigan Partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

Proceedings held in the above-entitled case before Judge Anna Diggs Taylor, taken by Patricia A. Everett, CSR-4602, a Certified Shorthand Reporter and Notary Public, in and for Oakland County, Michigan (acting in Wayne County, Michigan), at 740 United States Courthouse, Detroit, Michigan, on the 6th day of December, 1994, commencing at or about 9:00 a.m., pursuant to the applicable court rules.

* * *

Appendix G

Testimony of Steven Fellows

[36] * * *

Q. (By Mr. Morganroth): During the eighties did you have the opportunity to see me work?

A. Many times.

Q. Would you come into the office on Saturdays?

A. I would.

Q. Did you see me working on Saturdays?

A. Always, unless you were out of town.

[37] Q. How about on Sundays?

A. On Sundays if I came in you were there.

Q. And how about at nights, did you ever come to my house and see me working at nights?

A. On several occasions. In fact, I stopped coming. I used to call you to come over to watch Monday Night Football once in a while. And we would sit in your lower level and you would dictate through the entire football game. Your wife would fall asleep on the couch, and I would say goodbye to you about midnight because you were still dictating, yes.

Q. And tell me, sir, did I do that throughout the years that you were in the office, that kind of work?

A. Yes. You've always worked, for the most part, seven days a week, day and night.

Q. And how about Mr. DeLorean during the eighties, did he come into the office often?

A. Yes.

Q. Tell me, did he ever call at night?

A. Yes.

Q. How often?

A. I feel that — I can only answer that as to calls that I took. If you were on your other line and [38] the phone would ring, I would pick it up. I would just tell you on many occasions I answered the phone after hours and John DeLorean was on the phone. Also there were many times I heard other attorneys page you or call you to let you know Mr. DeLorean was calling.

Q. Throughout all the years that you were in the office with me, did John DeLorean ever tell you that he was unhappy or dissatisfied with anything I did for him?

A. He told me the contrary. We spoke from time to time and he often told me that he thought you were the best.

Q. And tell me, during the period of time that we were together in the office — I never asked you this — well, did you form any opinion as to my capabilities as a lawyer?

A. Yes, I have.

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Q. And what was your opinion?

A. You were one of the best practitioners that I've ever known. I called you at one time an enigma. You're one of the few people that have been in practice as long as you have and has stayed a general practitioner. You've handled virtually every type of case. Over the years I've had to [39] go off into a specialty. I couldn't keep up with a general practice, and I feel that you're an excellent attorney.

Q. Now, you talked about the tremendous workload that I had in your direct examination. Did I give work to other lawyers in the office?

A. Yes, you did.

Q. And were there times over the years where I supported the other lawyers by paying the rent and by giving them money when they needed it?

A. That's true.

* * *

Testimony of Maria Reed

[143] * * *

CROSS-EXAMINATION

BY MR. MORGANROTH:

Q. Mrs. Reed, you still work for me, don't you?

A. Yes, I do.

Q. And have worked for me part-time for a few years now again?

A. Yes.

Q. And you work at nights?

A. I work at night, Saturdays, Sundays.

Q. Do I work at nights and Saturdays and Sundays?

A. Yes.

[144] Q. And there's other secretaries in the office but you work after-hours and Saturdays and Sundays now; is that correct?

A. Yes.

Q. And you've done that for the last few years for me; correct?

A. Yes.

* * *

[160] * * *

Q. Now, I thought that from 1986 to '91 you were working on a part-time basis for Mr. Morganroth; is that correct?

Appendix G

A. Sometimes I would stay after work and do things for him, overload of work that he had. But it was never on the DeLorean thing, it was just other, you know, cases.

Q. But you would be working basically after 5:00 for Mr. Morganroth?

A. Yes.

Q. And you would be working sometimes on Saturdays.

A. Sometimes on Saturdays.

* * *

APPENDIX H — TRANSCRIPT OF TRIAL DATED DECEMBER 22, 1994

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-CV-70848-DT
Detroit, Michigan
Thursday, December 22, 1994

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT COURT JUDGE, and a jury.

APPEARANCES: –

For the Plaintiffs: MAYER MORGANROTH, ESQ.
ELLEN R. NADLER, ESQ.
JEFFREY B. MORGANROTH, ESQ.

NOT PRESENT:
For the Defendants: EDWARD FREIDBERG, ESQ.

Appendix H

* * *

[6] * * *

THE COURT: The court was in receipt a note at 10:45 saying:

QUESTION: Page 97, Section 1962(b) reads the same as page 103, Section 1962(c). Is this intentional?

And I've notified the — well Mr. Pierce is still not here, although he did call to ask what the last questions were and I had the law clerk tell him he simply must come downtown.

And this is the note I planned to return.

Ignore page 103 because it repeats 1962(b) instead of reciting 1962(c). Simply be governed by page 104 which correctly states the elements of 1962(c) which is directed against a defendant who "conducted or participated in the conduct of the enterprise through that pattern".

[7] Is there an objection to this?

MR. MORGANROTH: No.

MS. NADLER: No, Your Honor.

THE COURT: All right.

(Whereupon court was in recess. Court was back in session at about 12:45 p.m.)

Appendix H

THE COURT: Earlier this morning, the court received a note from the jury requesting index of exhibits and I told the law clerk just to tell them to wait until after the New Year so I could confirm with counsel.

But in the meanwhile, Ms. Nadler has produced the list of exhibits, index of exhibits, that both sides apparently had relied upon during trial and she has redacted the names of the witnesses who introduced each exhibit and any other information other than the list and the number of each one.

So I'll ask if counsel have any objection, now, to the court sending in this list to the jury. And there are copies for each member of the jury.

Any objection?

MS. NADLER: We have no objection.

MS. FALTER: No objection, Your Honor.

THE COURT: All right. I'll keep mine. We'll take in there all right.

* * *

APPENDIX I — PERSONAL FINANCIAL STATEMENT OF JOHN Z. DELOREAN DATED JANUARY 15, 1993

JOHN Z. DELOREAN

PERSONAL FINANCIAL STATEMENT

January 15, 1993

Assets

Bank accounts	$1,500,000
Notes receivable from sale of Logan Manufacturing Company	2,850,000
Preferred stock from sale of Logan Manufacturing Company	4,500,000
Real estate:	
Land and industrial buildings, Logan, Utah, leased for ten years with rent at $240,000 a year plus profit sharing for the first three years and $300,000 a year for the last seven years. Leasee has the option to purchase for $2,500,000	2,500,000
Lamington Farm, Bedminster, New Jersey, 434 acres with residence and ten rental properties providing more than	

Appendix I

$200,00 of gross rental income. Estimated market value	30,000,000	
Oil and mineral interests	50,000	
Patent, trade mark and marketing rights acquired from De Lorean Motor Company at acquisition cost	10,000,000	
Other patents at estimated market value	5,000,000	
Judgment against H.L. Weitzman	600,000	$57,000,000
Liabilities		
Private loan secured by first mortgage on New Jersey farm. Interest rate is 1/4% under prime until the year 2000		6,000,000
Net worth		$51,000,000

APPENDIX J — STIPULATION OF FACTS

STIPULATION OF FACTS

1. Ecclesiastes 9:10-11-12, Inc. was formerly known as Logan Manufacturing Company ("Logan").

2. Logan changed its name to Ecclesiastes 9:10-11-12, Inc. ("Ecclesiastes") in or about January 1993.

3. DeLorean Research Limited Partnership ("DRLP") was a limited partnership formed in 1979 for the purpose of investing in the research and development of the DeLorean sports car.

4. GPD was established and controlled by Colin Chapman ("Chapman") and Fred Bushell ("Bushell").

5. DRLP entered into a contract with GPD regarding the performance of the research and development of the DeLorean sports car (the "DRLP/GPD Contracts").

6. The DRLP/GPD Contract called for GPD to cause the research and development or the DeLorean sports car to be performed by subcontracting the work to Lotus.

7. A private placement memorandum with attachments and exhibits was presented to HELP and its partners for the supposed purpose of soliciting and raising $20.0 million for research and development.

8. $17.8 million was raised from DRLP pursuant to the DRLP private placement memorandum and attachments and exhibits.

9. Chapman was the chairman and controlling shareholder of Lotus.

10. Bushell was the Chief Financial Officer of Lotus.

11. By February 25, 1982, DMCL had been placed in receivership based upon agreement by the Board of Directors of DMCL.

12. In 1984, a company known as Pacific International Equipment Inc. ("Pacific") attempted to purchase the assets of Logan from the DMC Bankruptcy Trustee.

13. In or about 1982, Howard Weitzman ("Weitzman") was retained to defend DeLorean in the California criminal case.

14. Weitzman eventually was named lead trial counsel in DeLorean's California criminal case.

15. Weitzman represented DeLorean and/or Logan in civil lawsuits through 1985.

16. Intentionally deleted.

17. Weitzman received $1.1 million from the ultimate sale of the Pauma Valley Property.

18. In 1986, Weitzman joined the law firm of Wyman Bautzer.

19. DeLorean hired Edward Freidberg ("Freidberg") and the Freidberg Law Corporation as counsel in connection with the Wyman Bautzer action.

20. Freidberg and his firm filed a countersuit against Weitzman in the Wyman Bautzer action for breach of fiduciary duties, negligence, and over payment of attorney fees.

21. In or about 1985, DeLorean testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services through the conclusion of both criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job Weitzman performed for him.

22. Bill Simon ("Simon") and his firm Hertzog, Calamari and Gleason ("HC&G") were retained in or about 1982 to defend DeLorean and Logan.

23. DeLorean and Logan represented that they would pay Simon's customary hourly rate for legal services.

24. In or about October 1983, Simon and HC&G withdrew as counsel for DeLorean and Logan in all matters for non-payment of legal fees.

25. On or about October 20, 1983, DeLorean sent a letter to the presiding judge in the matters handled by Simon for the purpose of requesting that Simon not be permitted to withdraw since, according to DeLorean, DeLorean did not have any funds to pay for legal services at that time.

26. In or about 1984, Simon and HC&G instituted legal proceedings against DeLorean in an attempt to collect the unpaid balance due them in the amount of $87,556.60.

27. DeLorean asserted a malpractice counterclaim against Simon and HC&G which was premised on the basis that Simon had negligently allowed DeLorean's adversaries to obtain personal and confidential documents located at DeLorean New Jersey estate during Simon's supervision.

28. Alan Greenberg ("Greenberg") and Graubard Mollen Dannett Horvitz and Pomerantz ("GMDH&P") were retained by DeLorean in connection with two tax matters.

29. On January 24, 1989, Weinberg and GMDH&P were also retained to provide legal services in connection with the DSQ Enforcement Action.

30. On or about January 5, 1993, the sale of the assets of Logan was consummated.

31. No monies were paid to Weinberg, Greenberg or their firm from the proceeds of the sale of Logan's assets.

32. Freidberg and his firm were paid an initial $250,000 retainer by DeLorean and Logan for the malpractice action to be filed against Morganroth and his firm, and Weinberg, Greenberg and their firm.

33. DeLorean and Logan never complained to Weinberg, Greenberg or their firm that any mistakes were made by them during any time that they provided legal services to DeLorean and Logan.

34. On or about February 2, 1993, DeLorean and Logan instituted malpractice claims against Morganroth and his firm and Weinberg, Greenberg, and their firm in New York.

35. Morganroth and his firm were not told that Logan sent Freidberg and his firm an initial $250,000 retainer in 1990.

36. Cristina Holdings Corporation purchased art, antiques, and furniture, some of which were then put to personal use by DeLorean.

37. DeLorean and others sent letters through the mails in connection with the Eureka/DMCI transaction.

38. Numerous telephone calls were made by DeLorean and others in connection with the Eureka/DMCI transaction.

39. Pleadings, motions, and correspondence were filed with the court and served upon opposing counsel and interested parties through the mail in connection with Pacific's attempt to purchase Logan's assets from the DMC Bankruptcy Trustee.

40. Numerous telephone calls were made by and among DeLorean, Nesseth, and others in correction with Pacific's attempt to purchase Logan's assets from the DMC Bankruptcy Trustee.

41. DeLorean sent letters to Weitzman through the mails in connection with unpaid legal fees and costs offer to Weitzman.

42. DeLorean and Logan caused the mails to be used on numerous occasions in connection with legal services provided by Weitzman to them.

43. DeLorean placed telephone calls to Weitzman in connection with unpaid legal fees and costs owed to Weitzman.

Appendix J

44. DeLorean and Logan caused the wires to be used on numerous occasions in connection with legal services provided by Weitzman to them.

45. Kimmerly received numerous letters from DeLorean through the mail during the course of providing legal services.

46. Kimmerly received a $50,000 check from Cristina Corporation through the mail.

47. DeLorean and Logan placed telephone calls to Kimmerly in connection with legal services provided by Kimmerly to them.

48. DeLorean sent a letter through the mail to a judge and others in an effort to prevent Simon and his firm from withdrawing notwithstanding the failure to pay legal fees.

49. DeLorean and Logan caused the mails to be used in connection with the legal services provided by Simon to them.

50. DeLorean caused the mails to be used on numerous occasions in connection with legal services provided by Weinberg, Greenberg and their firm.

51. DeLorean and Logan caused the wires to be used on numerous occasions in connection with legal services provided by Morganroth and his firm to them.

52. On several occasions, including during the years 1991 to 1993, Logan's audited financial statements state there is an outstanding balance owed to Morganroth and his firm in the amount of $1,408,689.26 for legal services rendered, which amount still has not been paid.

53. DeLorean and Logan at all times were aware that Morganroth and his firm intended to be compensated for services rendered to DeLorean and Logan.

54. DeLorean and Logan at all times were aware that Morganroth and his firm intended to be reimbursed for expenses they incurred on DeLorean's and Logan's behalf.

55. When Morganroth and his firm rendered legal services to DeLorean and Logan and paid expenses on their behalf, Morganroth and his firm did so with the expectation of being compensated.

56. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, DeLorean had no ownership interest in Logan and no beneficial rights.

57. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, Logan was in an irrevocable trust with DeLorean's ex-wife, Cristina, as a trustee.

58. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, DeLorean's New Jersey Estate had been noticed for foreclosure because of arrearage on mortgage payments.

59. As a result of the 1987 settlement with the DMC Bankruptcy Trustee, DeLorean replaced his ex-wife, Cristina, as the chairman and sole director of Logan.

60. As a result of the 1987 settlement with the DMC Bankruptcy Trustee, the multi-district litigation wherein DeLorean and Logan were defendants in numerous lawsuits

demanding damages in excess of $500 million was dismissed and releases were granted to DeLorean and Logan.

61. In 1987, Judge Woods strongly recommended that DeLorean settle with the DMC Bankruptcy Trustee.

62. Judge Graves also strongly recommended that DeLorean settle with the DMC Bankruptcy Trustee.

63. At the time of the settlement with DSQ in October of 1990, DeLorean's New Jersey Estate had been foreclosed upon and was scheduled for foreclosure sale in late October 1990.

64. The mortgage loan from Merrill Lynch was permitted to close and the foreclosure of DeLorean's New Jersey Estate was stopped and the property redeemed by virtue of the October 1990 settlement which according to its terms permitted same.

65. At the time of the 1990 DSQ settlement, the Cooperative Board of DeLorean's New York Cooperative Apartment had declared DeLorean in default for having placed liens on the proprietary lease, stock, and proceeds of the Cooperative Apartment in violation of restrictive covenants.

66. At the time of the 1987 settlement, the Cooperative Board of DeLorean's New York Cooperative Apartment had declared DeLorean in default for nonpayment of maintenance fees and for violation of the proprietary lease, stock certificate covenants, and agreements for having caused liens to be placed on the Cooperative Apartment and for nonpayment of maintenance fees and charges.

Appendix J

67. Both in 1987 and 1990, the Cooperative Board of DeLorean's New York Cooperative Apartment demanded that DeLorean be evicted.

68. Logan's December 31, 1992 financial statement stated that Logan owed Morganroth and his firm legal fees of $1,408,689.26.

69. DeLorean was sent written Logan reports for several years including 1993 that stated that Logan owed Morganroth and his firm $1,408,609.26.

70. DeLorean wrote in his published book, stated publicly on many occasions, and testified under oath that Weitzman saved DeLorean's life.

71. On October 16, 1990, DeLorean wrote to the American Arbitration Association and stated that he had four attorneys that he had consulted with at the time of the October 11, 1990 settlement.

72. DeLorean told the American Arbitration Association on October 16, 1990 that he had reached an agreement with the British Government to end litigation with them.

73. In 1992, DeLorean attempted to have Arthur Anderson hire Morganroth to defend itself in the action brought against it by the British Government.

74. DeLorean told Morganroth in 1992 that it was important to DeLorean for Arthur Anderson to win their case.

Appendix J

75. Logan's financial statements prepared for and approved by DeLorean in 1992 stated that Morganroth and his firm were owed $1,408,689.26 by Logan.

76. DeLorean requested that Morganroth render advice for DeLorean's benefit in connection with certain tax matters in 1992 through February 2, 1993.

77. DeLorean requested Morganroth to provide assistance to DeLorean's tax attorney, Mr. Elgort, in 1992 through February 2, 1993 for DeLorean's benefit.

78. On August 31, 1990, a summary judgment of foreclosure was rendered by Judge Deannu in New Jersey on DeLorean's New Jersey Estate regarding DeLorean's default under the Saike mortgage on the property.

79. A mortgage foreclosure sale was set for late October 1990 on the DeLorean's New Jersey Estate.

80. On May 6, 1986, DeLorean swore under oath that he was in arrears on his New Jersey Estate mortgage payments and on his New York Cooperative Apartment payments.

81. On May 6, 1986, DeLorean swore under oath that his Detroit civil attorney, C. William Garratt, was owed $222,000.

82. In 1986, DeLorean swore under oath that his attorney, Morganroth, had not been paid one cent.

83. On May 6, 1986, DeLorean swore under oath that his bank balance was under $1,000 and that he had no job, no prospects, and barely enough to pay child support.

Appendix J

84. On October 3, 1990, DeLorean sent a letter through the mail to the American Arbitration Association representing that "I owe Mayer Morganroth $2.2 million which I am unable to pay (he is forced to pay his own expenses to defend me), my California attorney has sued me for $687,000 of unpaid fees, and I am unable to pay the attorney who is defending this action."

85. On September 5, 1990, DeLorean signed a commitment with Lakevue Funding that stated that Morganroth and his firm were owed $2.2 million as of that date by DeLorean.

86. In 1990, DeLorean swore under oath that Morganroth is extremely competent.

87. In January of 1989, DeLorean's New Jersey Estate was appraised at $21,600,000, exclusive of the land and houses.

88. Morganroth and his firm represented Logan in the First Security Bank loans and renewals.

89. Morganroth and his firm represented Logan and DeLorean in the two Merrill Lynch loan transactions.

90. Morganroth and his firm represented DeLorean and Logan in the Saike loan transaction.

91. Morganroth represented Logan in the NAC/Heller loan extension.

92. Judge Woods restrained 834 Fifth Avenue from evicting DeLorean because the result would impair Logan's Court approved settlement and the ability of Logan to perform it.

Appendix J

93. DeLorean's December 31, 1989 financial statement was submitted to Judge Gerald Rosen and to the United States District Court by DeLorean on September 4, 1990, wherein DeLorean indicated his gross assets were $63,525,000.

94. DeLorean's December 31, 1989 financial statement stated that DeLorean's New Jersey Estate was valued at $30,000,000.

95. DeLorean stated that Logan's worth on December 31, 1989, inclusive of the underlying property, to be $18,000,000.

96. DeLorean made a submission to Judge Gerald Rosen that his financial net worth as of December 31, 1989 was $45,555,000.

97. Morganroth rendered legal services to DeLorean regarding the DeLorean Family Trust.

98. DeLorean's New Jersey Estate was purchased by DeLorean pursuant to land contract.

99. During the time period of 1982 through the present, DeLorean and/or Logan possessed, had an interest in, was affiliated or related to the entity or individual on any of the following savings accounts, checking accounts or commercial accounts, and/or was a signatory of such accounts at one time or another during such time period.

A. Account bearing the name of Cristina Corporation at United Nations Bank, New Jersey (Account Number 260 4484);

B. Account bearing the name Ecclesiastes at United Nations Bank, New Jersey (Account Number 260 4977);

C. Account bearing the name DeLorean at United Nations Bank, New Jersey (Account Number 603 9572);

D. Account bearing the name of Logan at United Nations Bank, New Jersey (Account Number 260-4771);

E. Account bearing the name of Logan at Cache Valley Bank;

F. Account bearing the name of Cindy L. Brady/ Cristina DeLorean at Security Savings (Account Number 50312085000584);

G. Account bearing the name of Lamington Estates at United Nations Bank, New Jersey (Account Number 603-682-9);

H. Account bearing the name Lamington Beef at United Nations Bank, New Jersey (Account Number 603-683);

I. Account bearing the name Cristina Holding Corporation at Banker's Trust Company (Account Number 415 579 72);

J. Account bearing the name of DeLorean d/b/a Lamington Beef at Somerset Trust Company;

K. Account bearing the name DeLorean Special Account at Bank of Lafayette; and

Appendix J

L. Account bearing the name or DeLorean at Somerset Trust Company (Account Number 6-94611).

100. DeLorean's December 18, 1991 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

101. DeLorean's December 31, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

102. DeLorean's November 30, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

103. DeLorean's September 30, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

104. On October 25, 1982, DeLorean Motor Cars ("DMC") voluntarily filed for bankruptcy.

105. DeLorean Motor Company Limited ("DMCL") was responsible for manufacturing the DeLorean sports car.

APPENDIX K — PLAINTIFFS' BRIEF IN OPPOSITION DATED JUNE 21, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93-CV-70848-DT

Hon. Anna Diggs Taylor

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

vs.

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

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In Pro Se and on behalf of
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Appendix K

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PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR STAY ENTIRE ACTION OR ALTERNATIVELY TO DISMISS COUNT I FROM THE COMPLAINT IN THE INSTANT ACTION FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY FOR MORE DEFINITE STATEMENT OF COUNT I OF THE COMPLAINT IN THE INSTANT ACTION

STATEMENT OF FACTS

On October 19, 1982, the nightmare began for John Z. DeLorean ("JZD") when he was busted by federal agents in connection with his acquisition of 220 pounds of pure Columbian cocaine valued at approximately $24,000,000. Shock reverberated across the country as the videotape of JZD's bust was played over and over again on television with the vivid scene of JZD examining the large quantity of cocaine and remarking that the cocaine was "as good as gold." Life would never be the same for the once high flying and flamboyant JZD who had been one of the most captivating forces in the automobile industry and who had been adored by the public. A disgraced JZD not only faced life in prison for major criminal charges, but his fortune and reputation were in grave jeopardy in light of the countless civil lawsuits that were contemplated against him and his affiliated entities. In fact, JZD's horror story

took a turn for the worse on October 25, 1982 when JZD's motivating force, his beloved car company, filed for bankruptcy and the car company's British counterpart, DMCL, faced certain doom while in receivership which had commenced in early 1982.

JZD intended to fight to remain a free man so he shopped for attorneys to represent him in his do or die criminal trial. In November of 1982, JZD was referred to Mayer Morganroth ("Morganroth") in his search for a permanent attorney. JZD consulted with Morganroth and he retained Morganroth to structure a defense and to provide consultation and advice with respect to JZD's criminal cocaine trial and certain other lawsuits contemplated by JZD and his affiliated entities. The defense structured by Morganroth along with his strategy and advice with respect to JZD's criminal cocaine trial were flawlessly implemented by Howard Weitzman and Donald Re who had taken on the trial duties. Miraculously, JZD was acquitted of all charges. Although a free man, JZD's legal troubles and entanglements had just begun.

In mid 1983, a flood of civil cases were filed against JZD, all of which consisted of multiple counts of fraud, embezzlement, breach of fiduciary duties, racketeering activity, and breach of contract allegedly committed by JZD. A myriad of parties sought hundreds of millions of dollars from JZD and in many instances $100,000,000 per count in multiple count lawsuits, most of which were filed in Detroit. In addition, JZD's snow grooming company, Logan Manufacturing Company ("Logan"), whose name was subsequently changed to Ecclesiastes, was joined as a defendant in some of the lawsuits as well. Making matters worse, JZD's wife, Cristina, broke JZD's heart when she filed for divorce, and the board of JZD's prestigious Co-op took

steps to evict JZD. A devastated and emotionally broken JZD turned to Morganroth to provide consultation, advice, and strategy with respect to the multitude of cases, and emotional support with respect to JZD's legal troubles and the loss of the love of his life, Cristina. JZD was so impressed with Morganroth's legal advice that he instructed Morganroth to take over all legal matters for JZD and Logan as of 1985.

Although Morganroth made serious inroads in the civil defense of JZD and Logan and successfully warded off the offensives taken by the plaintiffs in the multitude of cases, JZD suffered a serious blow in 1986 when he was indicted in Detroit for multiple counts of tax fraud and racketeering activity. Again facing serious criminal charges, JZD turned to Morganroth along with Weitzman to save his skin. JZD requested Morganroth to act as co-counsel to structure and quarterback the defense. Again, Morganroth's strategy and defense were successful and this time Morganroth uncovered the key evidence that changed the course of the trial. JZD was acquitted of all charges once again.

Nevertheless, JZD's and Logan's continuing legal troubles and entanglements were so cumbersome and enormous that Morganroth was forced to turn away and reject numerous other clients in order to devote necessary time and energy to solving crisis after crisis for them. In fact, Morganroth worked day and night, during every legal and religious holiday, vacations, weekends, at the office, at home, while driving in his automobile, and even while he was receiving treatment in the hospital in an effort to save JZD and Logan from financial ruin.

In 1987, after battling hundreds of lawyers in case after case, day after day, on JZD's and Logan's behalf, Morganroth negotiated and effectuated a settlement of cases seeking in excess

of $500,000,000 from JZD and Logan, in Detroit for $9,360,000 (which was paid from the assets of Logan) even though JZD's prior $19,000,000 settlement offer (for fewer benefits to JZD) made through previous counsel had been rejected. Morganroth also prevented an effort by the bankruptcy trustee and Cristina DeLorean Thomopolous to settle Ms. Thomopolous' exposure by transferring all of the assets of Logan to the DMC Trustee and completely divesting the DeLorean Family Irrevocable Trust of any interest in Logan. Instead, Morganroth in fact obtained Logan for JZD as part of the settlement despite the fact that JZD had no benefit interest in Logan or any right to its assets. Obtaining sole ownership off Logan for JZD turned out to be JZD's saving grace since he thereafter received benefits from Logan in the approximate amount of $27,000,000, which JZD used to pay off the settlement. In essence, Morganroth effectuated a settlement for JZD where JZD's adversaries paid JZD in excess of $18,000,000 net to dismiss their lawsuits against JZD and Logan, and also provided to JZD $800,000 from another escrow (Bridgewater), and the patents, trademarks, technology, licenses and tax benefits of DeLorean Motor Company, $1,000,000 upon the execution of the settlement, another $1,000,000 upon Logan making its first settlement payment, and a release of the ownership of the plant and land of Logan to him as well.

Morganroth had made great strides in solving JZD's legal troubles and entanglements, however, Morganroth continued to work day and night with respect to the remaining matters which were massive. For instance, Morganroth still was holding off the board of JZD's New York Co-op from evicting JZD. Proceedings had been initiated against JZD, but Morganroth continued to successfully ward off the board's offensive with JZD's $11,500,000 Co-op at stake. In addition, Morganroth

helped negotiate and effectuate multi-million dollar financing for JZD and Logan in order to keep Logan alive and to save JZD's New Jersey estate from foreclosure. Morganroth also successfully resolved several other of JZD's and Logan's matters, including, but not limited to, the Capital Cadillac case, which Morganroth settled for $17,500 wherein Capital Cadillac alleged that JZD defrauded them out of in excess of $1,000,000 by selling cars that JZD did not own. Moreover, Morganroth successfully represented JZD in three IRS audits and in a lawsuit filed by JZD against the IRS with respect to millions off dollars of taxes at issue.

Finally, it appeared as if JZD and Logan were out of the woods. Morganroth devoted more and more time to JZD's and Logan's extensive business, financial, and real estate matters, and as corporate counsel for Logan. In fact, Morganroth helped negotiate and effectuate a royalty and licensing deal with Steven Spielberg and Universal Studios in connection with the use of JZD's name and automobile in the Back To The Future movies and in related merchandise and apparel. Moreover, Morganroth represented JZD and Logan in Detroit in the massive lawsuit filed against the British Receivers and related parties in an effort to recoup monetary losses allegedly suffered by JZD and Logan.

The financial outlook for JZD and Logan appeared to be growing stronger by the day when JZD was hit with yet another potential death knell. Unbeknownst to Morganroth, a $53,000,000 default judgment had been entered against JZD in the United Kingdom in connection with a lawsuit filed by the British Receivers and apparently served on JZD. Unfortunately, JZD did not inform Morganroth of such service since JZD knew that JZD could not defend in the United

Kingdom without being arrested. JZD's ploy backfired when the British Receivers proceeded in Detroit against him and Logan in an effort to enforce the United Kingdom default judgment. Making matters worse, the British Receivers obtained a restraining order against JZD's and Logan's assets which choked off all signs of life of their financial condition. Moreover, the British Receivers badly wanted revenge on JZD since they believed that JZD was getting away with defrauding the British government out of in excess of $100,000,000, in connection with their investment in his car company. The British Receivers mounted and pursued a legal offensive against JZD and Logan of epic proportions. JZD and Logan contended that they could not even pay legal expenses at this time, however, Morganroth battled the British Receivers' extensive legal maneuvers day and night and he appeared to have achieved a major breakthrough when he flew to the United Kingdom and attended and participated in hearings before the High Court of Chancery, at his own expense, which resulted in the *vacatur* of the default judgment against JZD. Thereafter, the British Receivers offered to settle the matter for $2,000,000, but JZD rejected said offer notwithstanding Morganroth's, JZD's British attorneys', Weinberg's, and Kimmerly's recommendations and urgings to accept.

Unfortunately, Morganroth could not obtain fast enough relief in Detroit since one District Court Judge found that JZD had lied about not receiving service of the process in the United Kingdom action and another District Court Judge refused to lift the restraints until the British Receivers' appeal in the United Kingdom of the *vacatur* of the default judgment had been decided. Once again, JZD and Logan were on the brink of financial ruin. Not only was the loss of JZD's New Jersey estate weeks away through foreclosure proceedings, but JZD

contended that he did not have the source of funds to meet his daily living expenses. In addition, Logan could not meet its daily operating expenses and was forced to shut down operations in light of the immediate threat of liquidation. Facing imminent financial ruin, JZD and Logan begged Morganroth to effectuate a settlement with DSQ. Accordingly, Morganroth negotiated a settlement of the $53,000,000 default judgment (which had become approximately $70,000,000 with interest) for a $7,000,000 payment plan. As part of said settlement, JZD also was released by the United Kingdom and Ireland in connection with civil fraud and conspiracy claims involving JZD, Fred Bushell, and others regarding kickbacks on invoices paid to Lotus Car Company in the approximate amount of $12,500,000 which was misappropriated, and the $8,500,000 missing from GPD. Said release turned out to be another coup for JZD since Bushell eventually pled guilty to the criminal charges of fraud and having conspired with JZD after United Kingdom law enforcement officials raided his apartment and discovered documents which supported the charges and implicated JZD. Bushell was sentenced to four years in jail, fined 2,000,000 British Pounds, and the civil case which had been instituted by the United Kingdom against Bushell and JZD (Morganroth obtained a dismissal for JZD by virtue of the settlement with DSQ) currently is pending against Bushell. Although JZD and Logan were released from the civil actions, a criminal warrant was issued by the United Kingdom in 1992 for the arrest of JZD and the British Judge who issued the criminal indictment stated that JZD's conduct warranted a ten year prison sentence.

The DSQ settlement provided JZD and Logan with the possibility of resuscitating their suffocating financial condition. Morganroth was put to the task of negotiating and effectuating financing on behalf of JZD and Logan so that the operations of

Logan could be reopened and JZD's New Jersey estate could be redeemed from foreclosure (the DSQ settlement temporarily enabled JZD to stave off the loss of his estate through short term interim financing previously effectuated by Morganroth). Unfortunately, Morganroth's tireless efforts proved unsuccessful since very few lenders wanted anything to do with JZD given the chaotic mess that he created with respect to his car venture. With time running out, JZD shifted course and put Logan up for sale since Logan easily could obtain funding if JZD was not associated with the company. Morganroth negotiated deal after deal for the sale of Logan, all of which fell apart as a result of JZD's constant alteration of the conditions of sale. With the pressure mounting and time running out, DeLorean shifted course again and placed his New York Co-op up for sale. A lucrative deal was agreed to in principle with Reginald Lewis for approximately $11,500,000, exclusive of furnishings, however, JZD again constantly altered conditions of the sale until Lewis lost all patience and the deal fell apart. Morganroth singlehandedly revived the deal through persistent negotiation with counsel for Lewis and the sale took place in or about August 1992. JZD then used the proceeds from the sale to satisfy the DSQ settlement and to infuse desperately needed capital into Logan so that Logan would not die. Meanwhile, Morganroth recently learned that JZD secretly auctioned off the furnishings of the New York Co-op and pocketed approximately $3,000,000.

Next, JZD concentrated his efforts on redeeming his New Jersey estate from foreclosure since the loss of the estate again was imminent. Morganroth tirelessly pursued and attempted to negotiate financing for JZD, however, JZD would not consider paying the high rates that the few interested lenders demanded. Instead, JZD again placed Logan up for sale. After extensive

negotiation by Morganroth, one of the prior agreements in principle which had been aborted was revived. Daily negotiation, drafting and review of documents by Morganroth were performed, however, JZD once again caused the deal to fall apart with his constant alteration of the conditions of sale. Again, Morganroth came to the rescue and revived the transaction. On or about January 5, 1993, the sale of Logan was consummated for approximately $16,500,000, and JZD was able to save his New Jersey estate.

Against great odds, Morganroth had achieved the impossible. After in excess of ten years of day and night monumental legal battles, Morganroth cleaned the slate for JZD and Logan. JZD not only was a free man, but he walked away from his massive legal troubles with unbelievable wealth. In addition, Logan not only was preserved, but the assets of Logan were sold to new owners who brought stability to the operations. As of January 1993, JZD had a net worth of approximately $40,000,000 when in fact his net worth in October of 1984 was assessed by JZD as more than a negative $23,000,000 and at that time he was without earnings and essentially bankrupt. The story, however, did not end happily since Morganroth soon learned that JZD and Logan had conned and defrauded Morganroth out of enormous legal fees and expenses as part of a continuing plan of racketeering activity.

Throughout Morganroth's legal representation of JZD and Logan, JZD and Logan agreed and promised to pay all expenses and attorney fees to Morganroth upon Morganroth's customary rates. JZD and Logan paid Morganroth partial payments of the legal fees and expenses rendered by Morganroth, however, for substantially all of the time throughout Morganroth's legal representation, JZD and Logan had contended that they

experienced extreme financial difficulties, including, but not limited to, court ordered restraining orders which encumbered their assets. Although JZD and Logan represented that their immediate ability to pay attorney fees and expenses routinely was impeded by financial constraints, JZD and Logan repeatedly represented, assured, and warranted throughout Morganroth's legal representation of them that all amounts incurred would be paid in full when monies, assets, and/or properties became available or unrestrained. Relying on such representations, Morganroth performed legal services and incurred expenses on their behalf.

Although JZD and Logan continued to sporadically make partial payments to Morganroth for legal services rendered, the past due and outstanding fees and expenses mounted. In fact, Morganroth was required to pay virtually all expenses associated with legal representation of JZD and Logan. As the past due legal fees and expenses substantially grew, Morganroth became uncomfortable with the amount of the outstanding balance. Consequently, Morganroth repeatedly inquired, requested, and demanded that JZD and Logan satisfy the outstanding legal fees and expenses. JZD and Logan always set Morganroth at ease and made Morganroth more comfortable with the situation by way of a fraudulent con job. JZD and Logan continually acknowledged and certified the amounts past due and owing to Morganroth, and represented, assured, and warranted that all amounts incurred would be satisfied as soon as monies, assets, and/or properties became available or unrestrained. JZD's and Logan's representations, certifications, and assurances not only were made to Morganroth orally and in writing, but in testimony, sworn affidavits, letters, financial statements, and other documents. At the same time, JZD and Logan repeatedly pleaded with Morganroth to continue rendering; legal representation

since JZD and Logan could not survive without Morganroth. In addition, JZD and Logan constantly referred to Morganroth as the best attorney in the country and they referred high profile clients to Morganroth. Although JZD and Logan successfully convinced Morganroth that they had honorable intentions and would perform their obligations, JZD and Logan had no intention of doing so. Instead, JZD and Logan planned to string Morganroth along until their massive legal troubles and entanglements were resolved and then leave Morganroth high and dry. Unbeknownst to Morganroth, JZD and Logan had fraudulently diverted $8,500,000 in connection with the DRLP Scheme (Complaint, Section 43(A) at 16) and approximately $12,500,000 in connection with the DMCL Scheme (Complaint, Section 43(B) at 16), and JZD and Logan continually defrauded Morganroth and others in order to hide their fraudulent diversion of such monies and keep said monies intact. For instance, JZD and Logan not only defrauded the creditors of Logan and DMC in connection with the Creditors Scheme (Complaint, Section 43(D) at 19), but they defrauded their legal saviors, such as Morganroth as delineated above, Howard Weitzman who was JZD's trial attorney in both criminal trials (Complaint, Section 43(E) at 19), and Thomas Kimmerly who was general counsel and tax counsel to JZD and Logan from 1979 through 1992 (Complaint, Section 43(H) at 21) in order to hide their fraudulent diversion of monies and keep said monies intact.

Eventually, Morganroth had resolved case after case and matter after matter until it became apparent in late 1992 that monies, assets, and/or properties were available and/or unrestrained, and that JZD and Logan would have the opportunity and capacity to satisfy the substantial legal fees and expenses past due and owing which were fast approaching $4,000,000. Accordingly, Morganroth inquired, requested, and

demanded on numerous occasions in August 1992 that the entire outstanding balance be satisfied in connection with the sale of JZD's New York Co-op. JZD and Logan represented that they could not satisfy any portion of the outstanding balance out of the proceeds of said closing since such funds were required to satisfy the DSQ settlement and to immediately infuse monies into Logan for operational capital until Logan's sale could be closed in order to maintain the viability of Logan which was in jeopardy. Furthermore, JZD and Logan represented, warranted, and assured that Morganroth would be paid in full as a result of the Logan sale, and they again acknowledged and certified the amount past due and owing to Morganroth. Based on the foregoing, Morganroth allowed the closing of the sale of JZD's Co-op to take place and indeed closed the sale for JZD.

As the Logan sale appeared imminent, Morganroth continually discussed with JZD and Logan the outstanding balance, and JZD and Logan repeatedly represented, warranted, and assured Morganroth that said legal fees and expenses would be satisfied prior to the end of January 1993. Although the closing of the Logan sale was to take place on or about January 5, 1993, JZD and Logan represented that monies could not be disbursed until the end of January due to tax considerations. The Logan sale, in fact, was consummated on January 5, 1993, and JZD continued to represent, warrant, and assure Morganroth throughout January 1993 that the legal fees and expenses would be fully paid prior to the end of January. Unbeknownst to Morganroth, at the same time as JZD and Logan were making the aforementioned representations. JZD and Logan were plotting with attorney Ed Friedberg to institute a frivolous malpractice claim against Morganroth in order to attempt to defuse any action that Morganroth might file when January ended and the legal fees and expenses were not satisfied.

Appendix K

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II. THIS HONORABLE COST SHOULD NOT STRIKE PLAINTIFFS' RICO CLAIM (COUNT I).

Although Defendants contend that Plaintiffs' RICO claim should be stricken pursuant to Fed. R. Civ. P. 12(b)(6), Defendants have not and cannot articulate any basis for doing so or satisfy their substantial burden.

A. *The Complaint Sufficiently Identifies or Defines the RICO* "Enterprise."

Defendants disingenuously argue that Plaintiffs have neglected to identify or define the RICO enterprise. Defendants carry forward their erroneous argument to create a domino effect and contend that because Plaintiffs purportedly failed to identify or define the RICO enterprise, Plaintiffs' Complaint also fails to plead a violation of § 1962 and fails to plead facts showing Plaintiffs' injuries were caused by a violation of §1962. Defendants' contentions are without merit since Plaintiffs identified and/or defined the RICO enterprise in the Complaint.

The RICO statute defines an "enterprise" in 18 U.S.C. §1961(4) as follows:

> Enterprise includes any individual, partnership, corporation, association or other legal activity, and any union or group of individuals associated in fact although not a legal entity.

The aforementioned definition of an enterprise has been repeatedly reaffirmed in a vast body of case law. *See, e.g., United States* v. *Turkette*, 452 U.S. 576, 582 (1981).

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In the case at bar, Plaintiffs' Complaint identifies and defines the RICO enterprise as an association in fact by and between JZD, Logan, and others. *See, e.g.*, Complaint at para 38-39, 51, 60. First, Plaintiffs' Complaint alleges the existence of an enterprise within the meaning of §1961(4) by stating that the Defendants (JZD and Logan) "have been and are employed and/or associated with each other and others in a partnership, corporation, and/or association in fact which formed and comprised an enterprise as defined in 18 U.S.C. §1961-1965 *et seq.*" Complaint at para 38. Next, Plaintiffs' Complaint not only specifies that the enterprise is an association in fact, but also provides additional particularity by stating that the enterprise, consisting of JZD, Logan, and others, "comprised formal or informal associations in fact that functioned as continuing units over time through a hierarchial or consensual decision-making structure." Complaint at para 39. In fact, Plaintiffs' Complaint provides even greater specificity by alleging that JZD currently exercises the day to day management and operation of the aforementioned association in fact (Complaint at para 40), that the enterprise was formed in 1978 and has continued through the date of the Complaint (Complaint at para 60), that the enterprise has engaged, participated, and involved itself in the activities which affect interstate or foreign commerce (Complaint at para 51, 55, 57-58), and that JZD and Logan used, invested, and directed the proceeds from their pattern of racketeering activity in order to establish, operate, maintain, and acquire an interest in the enterprises (Complaint at para 53-54, 57).

Undoubtedly, Plaintiffs have more than adequately identified and defined the enterprise. It is well settled that the definition of a RICO enterprise under 18 U.S.C. §1961(4) includes an "association in fact" and that "proof of association with a RICO enterprise may depend wholly on circumstantial

evidence. *United States* v. *Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990); *United States* v. *Thevis*, 665 F.2d 616, 625 (5th Cir. 1982). Plaintiffs' Complaint sets forth with great specificity more than adequate facts to provide circumstantial evidence of JZD's and Logan's association in fact. Complaint at para 11-61. Moreover, the association in fact formed by JZD, Logan, and others on its face is distinct and separate from the defendant/ person, since the association in fact" as an entity is not a defendant in the case at bar. *See, Haroco* v. *American National Bank and Trust Co. of Chicago*, 747 F.2d 384, 401 (7th Cir. 1984); *Cullen* v. *Margiotta*, 811 F.2d 698, 729-730 (2nd Cir. 1987). Furthermore, Defendants' inquiry as to the identity of the "other" members of the enterprise is a red herring. Plaintiffs have referenced unnamed others as being members of the enterprise since affiliates and representatives of JZD and Logan also combined with JZD and Logan to form the association in fact referred to as the enterprise in the Complaint. The fact that not all of the affiliates and representatives were specifically named in the Complaint does not render the Complaint deficient since the Complaint even is sustainable had Plaintiffs merely alleged that JZD and Logan alone combined to form the association in fact referred to as the enterprise. Although Defendants easily could obtain information regarding the unnamed others (who are not defendants) through discovery, Plaintiffs state that the others include, but are not limited to, such affiliates and representatives as Cristina Corporation, Cristina Holding Corporation, Fred Bushell, Colin Chapman, GPD, and Roy Nesseth. In any event, by virtue of the fact that Plaintiffs' Complaint sufficiently identifies and defines the RICO enterprise, the other arguments raised by Defendants (that Plaintiffs' Complaint fails to plead a violation of §1962 and fails to plead facts showing Plaintiffs' injuries were caused by violation of §1962) are meritless and naturally fail since said

arguments merely were based upon the faulty premise that no enterprise was alleged.

B. *Plaintiffs' Complaint Adequately Alleges the Requisite Racketeering Activity Predicate Acts.*

It is abundantly clear that Plaintiffs' Complaint alleges that Defendants committed the following five different types of predicate acts as defined in 18 U.S.C. §1961(1): (1) Violation of 18 U.S.C. §1341 (Complaint at para 46A); (2) Violation of 18 U.S.C. §1343 (Complaint at para 46B); (3) Violation of 18 U.S.C. §1952 (Complaint at para 46C); (4) Violation of 18 U.S.C. §1956 (Complaint at para 46E); and (5) Violation of 18 U.S.C. §1957 (Complaint at 46F). *See*, 18 U.S.C. §1961(1). In addition, the allegations of the aforementioned predicate acts are set forth with great specificity in Plaintiffs' Complaint. In fact, the allegations regarding the predicate acts contained in paragraphs 46A, 46B, 46C, 46E, 46F are supported by detailed facts delineated in the first 25 pages of the Complaint.

Throughout the first 25 pages of the Complaint, Plaintiffs specify the dates, misrepresentations, occurrences, events, intent, parties involved, reliance, knowledge, and damages in particular detail that support Defendants' acts of mail fraud and acts of wire fraud. In addition, in paragraph 46A of the Complaint, Plaintiffs further specify ten instances of Defendants, use of the mails in violation of 18 U.S.C. §1343 along with dates, substance of mailings and identification of parties, and in paragraph 46B of the Complaint, Plaintiffs further specify 33 instances of Defendants' use of the wires in violation of 18 U.S.C. §1343 along with dates, substance of telefaxes and telephone conversations, and identification of the parties. The factual details specified in the Complaint with respect to the

aforementioned fraudulent misconduct more than satisfy the pleading requirements of Fed. R. Civ. P. 9(b). Rule 9(b) is read in conjunction with Fed. R. Civ. P. 8(a) and therefore, Rule 9(b) takes into account the general simplicity and flexibility contemplated by the Rules. *E.g., In Re: Langhorn Securities Litigation*, 573 F. Supp. 278 (W.D. Okla. 1983); *Clark* v. *Cameron-Brown Co.*, 72 F.R.D. 98 (W.D.N.C. 1976); 5 Wright & Miller, Federal Practice and Procedure, §1298 (1969). In keeping with the overall intent of the Rules, Rule 9(b) does not impose a rigorous burden of pleading on a plaintiff and does not require a plaintiff to plead every element of fraud; rather, a plaintiff merely must set forth facts with sufficient particularity to apprise defendants of the charges against them. *See*, *Decker* v. *Massey-Ferguson, Ltd.*, 681 F.2d 111 (2nd Cir. 1982); *Blascoechea* v. *Sveredrup & Parcel & Assoc.*, 486 F. Supp. 169 (E.D. Pa. 1980); *Temple* v. *Haft*, 73 F.R.D. 49 (D.C. Del. 1976). Moreover, it has been widely recognized that nothing in Rule 9(b) requires rigid exactitude such as requiring the specification of the precise words used so long as the nature and subject of the fraud are described. *See*, *Seville Industrial Machinery Cord.* v. *Southmost Machinery Cord.*, 742 F.2d 786, 791 (3rd Cir. 1984), *cert den.*, 469 U.S. 111 (1985); *Pandich, Inc.* v. *Rooney*, 632 F. Supp. 1430, 1436 (W.D. Ill. 1986); *Accord, Meade* v. *Weber*, 647 F. Supp. 954, 956 (E.D. La. 1986). Finally, Rule 9(b) is even further relaxed where matters are peculiarly within the adverse parties' knowledge such as is the case here. *See, Odette* v. *Sheavon Hammell & Co.*, 394 F. Supp. 946 (S.D.N.Y. 1975). Here, further particularity would serve no purpose other than to create an extremely lengthy and cumbersome complaint in light of the fact that Plaintiffs have more than satisfied the pleading requirements of Rule 9(b).

Moreover, Plaintiffs also delineate the dates, unlawful activity, occurrences, events, intent, misrepresentations,

knowledge, parties involved, and damages that support Defendants' violation of 18 U.S.C. §1952 (false pretenses) and violation of 18 U.S.C. §1957 (unlawful monetary transactions). In fact, all of paragraph 43 of the Complaint provides more than sufficient detail of the factual bases supporting said predicate acts so as to satisfy the notice pleading requirements of Rule 8(a) which are applicable (Rule 9(b) inapplicable).

Furthermore, Plaintiffs also provide specific details of the factual bases supporting Defendants' violation of 18 U.S.C. §1956 (laundering of monetary instruments) in paragraph 43(C) of the Complaint so as to satisfy the notice pleading requirements of Rule 8(a) which are applicable (Rule 9(b) inapplicable).

C. *Plaintiffs' Complaint Adequately Alleges the Requisite "Pattern" of Racketeering Activity.*

Defendants' argument that Plaintiffs' Complaint does not adequately plead the requisite "patterns of racketeering activity lacks merit in law and in fact.

It is well established that the "pattern" requirement set forth in 18 U.S.C. §1961(5) is comprised of the following elements: (1) that the predicate acts are related, and (2) that they amount to or pose a threat of continued activity. *See, Seduce* v. *Imrex Co.*, 473 U.S. 479, 496 (1985); *H.J. Inc.* v. *Northwestern Bell*, 492 U.S. 229, 239-243 (1989).

First, Plaintiffs' Complaint more than adequately satisfies the element of relatedness. The element of relatedness is defined in terms of the relationship of the Defendants' racketeering acts to one another such that they have "the same or similar purposes, results, participants, victims or methods of commission, or

otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J. Inc.*, 492 U.S. at 239-140. The racketeering activity alleged in Plaintiffs' Complaint fits squarely within said definition. Plaintiffs allege that the pattern of racketeering activity committed by Defendants includes, but is not limited to, ten schemes to defraud that are delineated in the Complaint in paragraph 43. All of the aforementioned schemes consisted of the same or similar purposes, results, participants, methods of commission, and were otherwise interrelated and were not isolated events.

For instance, Defendants' racketeering activity commenced in 1979 with the DRLP Scheme. The purpose of the DRLP Scheme was for Defendants to unlawfully convert for their own use $8,500,000 raised from the limited partnership known as DRLP. Defendants accomplished their illicit objective through the commission of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 when raising funds for the research and development of the DeLorean sports car and the ERM plastic process, which was supposed to provide the partners in DRLP with tax deductions. Instead, Defendants unlawfully diverted said funds for their use in order to remove encumbrances on their own property, to satisfy their personal obligations, and to obtain additional assets.

In connection therewith, Defendants also used the same unlawful means to perpetrate the DMCL Scheme. Defendants defrauded DMCL (the entity manufacturing the DeLorean sports car) through the commission of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 by fraudulently misrepresenting that the funds raised through the DRLP private placement would only satisfy a portion of the contract with the entities responsible for engineering and developing the

DeLorean sports car when in fact such contract was approximately $12,634,000 less than the money raised. Defendants caused DMCL to overpay by $12,634,000 and Defendants diverted said funds for their personal benefit for the same purposes as in the DRLP Scheme.

Thereafter, in 1982, the DeLorean car company plant was put into receivership and was facing permanent shutdown. Defendants desperately wanted to bring the company out of receivership in order to fulfill JZD's dream and in order to hide their unlawful diversion of funds in connection with the DRLP Scheme and the DMCL Scheme. The receivers already had begun scrutinizing the company's documentation and discovery of the aforementioned schemes was imminent. Accordingly, Defendants attempted to defraud the Mafia out of $10,000,000 in laundered money in order to bring the company out of receivership and thereby hide their unlawful conduct. Defendants implemented the Eureka Federal Savings and Loan Scheme, and in so doing, Defendants again committed mail fraud, wire fraud, violated 18 U.S.C. §1952 and §1957, and even violated 18 U.S.C. §1956 as a result of the money laundering.

In the meantime, a tremendous amount of litigation had commenced involving Defendants. Not only did DeLorean face criminal charges with respect to the DRLP Scheme, the DMCL Scheme and the Eureka Federal Savings and Loan Scheme, but DeLorean and Logan faced a multitude of civil cases arising out of the DRLP Scheme and the DMCL Scheme. Defendants attempted to avoid responsibility for the DRLP Scheme and DMCL Scheme by perpetrating the Creditors Scheme in 1984. Defendants figured that they could shield evidence of their prior unlawful conduct by purchasing Logan's assets through an

affiliate but fraudulently misrepresenting that the sale was to an independent company and at arm's length. Although Defendants' plan was unsuccessful, Defendants again committed mail fraud, wire fraud, and violated 18 U.S.C. §1952 and §1957.

Moreover, from 1982 through the present, Defendants hired several attorneys to defend them in criminal and civil cases arising out of the aforementioned schemes, however, Defendants continued their racketeering activity against their attorneys by defrauding them out of legal frees and expenses so that Defendants could retain the funds obtained through the DRLP Scheme and DMCL Scheme. Defendants committed the predicate acts of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 in the schemes perpetrated against their attorneys. *See*, Complaint at para 43E-J.

Clearly, Plaintiffs' Complaint more than adequately satisfies the element of relatedness since "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts." *Silverman* v. *Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich. 1991), *citing, Robinson* v. *Kidder, Peabody & Co.*, 674 F. Supp 243, 246 (E.D. Mich. 1987). In fact, Plaintiffs' Complaint satisfies the element of relatedness merely by virtue of the allegations set forth in the Mayer Morganroth and Morganroth & Morganroth Scheme. *See*, *BCBS* v. *Kamin*, 876 F.2d 543, 544-545 (6th Cir. 1989).

Second, Plaintiffs' Complaint more than adequately satisfies the element of continuity. The Supreme Court explained that "continuity" is

> a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past

> conduct that by its nature projects into the future with a threat of repetition. *H.J. Inc.*, 492 U.S. at 241. *See also, United States* v. *Busacca*, 936 F.2d 232, 237 (6th Cir. 1991)

The continuity element is satisfied where the predicate acts extend over a substantial period of time or can be attributed to a defendant operating as part of a long term association that exists for unlawful purposes or by its very nature projects into the future with a threat of repetition. *Id.* at 242-243. Here, Plaintiffs' Complaint satisfies both the closed and open-ended concept (even though satisfaction of one suffices) since Plaintiffs' Complaint delineates a closed period of repeated conduct spanning over 13 years (1979 through February 1993), which also by its very nature projects into the future with a threat of repetition. In fact, Defendants' racketeering activity perpetrated against the Plaintiffs alone continued for a substantial period and satisfies the continuity requirement without reference to any other racketeering activity alleged in the Complaint.

D. *No Greater Specificity is Needed.*

Plaintiffs' Complaint provides far greater specificity than is required under Rules 8(a) and 9(b). Nevertheless, in the event that this Honorable Court determines that additional pleading is necessary, Plaintiffs should be provided the opportunity to amend their Complaint pursuant to Fed. R. Civ. P. 15. It is well settled that leave to amend shall be freely given so that an action is decided on the merits. *See, Foman* v. *Davis*, 371 U.S. 178, 182 (1962); *United States* v. *Hougham*, 364 U.S. 310 (1960); *Gillespee, Administratrix* v. *United States Steel Cord.*, 379 U.S. 148 (1964); *Conley* v. *Gibson*, 355 U.S. 41 (1957).

Appendix K

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the instant Motion, and to awards costs and attorney fees so wrongfully incurred by Plaintiffs in connection herewith.

Respectfully submitted,

By s/ Mayer Morganroth
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Dated: June 21, 1993

APPENDIX L — PLAINTIFFS' COMBINED BRIEF IN OPPOSITION DATED FEBRUARY 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' COMBINED BRIEF IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST COUNT I AND MOTIONS FOR JUDGMENT ON THE PLEADING AGAINST COUNT I AND II

* * *

PRELIMINARY STATEMENT

Defendants filed three Motions, on or about December 20, 1993, seeking to dismiss Plaintiffs' RICO claim (Count I) and Fraud claim (Count II). In support of the Motions, Defendants submitted 71 pages in briefs arguing that (1) the RICO and Fraud claims should be dismissed since Defendants are former clients of Plaintiffs, and that (2) the RICO claim also should be dismissed on the additional ground that there is no evidence to support the RICO allegations. We submit this Brief to respond to the meritless arguments raised by Defendants in their three Motions.

Defendants mistakenly argue that Plaintiffs' RICO and fraud claims improperly utilize Defendants' "confidences" and "secrets." But Defendants fail to identify *any* such confidences or secrets, apparently believing that the entire subject matter of DeLorean's repeated and well-documented frauds are somehow magically transformed into "confidences" and "secrets" merely

because there was an attorney-client relationship between Plaintiffs and Defendants when some of DeLorean's fraudulent conduct occurred. This is clearly not the law. As important, the evidence that will be used at trial to support Plaintiff's RICO and fraud claims is either a matter of public record or was acquired through discovery in this action, *after* the termination of the attorney-client relationship. In any event, it is settled law that attorneys are permitted to use confidences and secrets in suits to collect their fees owed and to defend themselves against allegations of malpractice, and Defendants cite no cases holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as fraud, as well.

Moreover, Defendants' contention that no evidence supports the RICO allegations is baseless. Defendants' Motion should be denied since more than sufficient evidence exists to establish a genuine issue of material fact with respect to the RICO allegations. Fed. R. Civ. P. 56; *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322-323 (1986). In considering Defendants' contention, the Court must view the facts and all inferences to be drawn in the light most favorable to the Plaintiffs. *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *60 Ivy St. Corp.* v. *Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987). Review of the evidence makes clear that Defendants have not and cannot sustain their burden of showing conclusively that no genuine issue of material fact exists. *60 Ivy St. Corp.*, 822 F.2d at 1435; *Smith* v. *Hudson*, 600 F.2d 60, 63 (6th Cir. 1979). In fact, instead of addressing the abundant factual evidence, Defendants use the bulk of their briefs to reargue their prior contention that Plaintiffs have not

sufficiently *pled* the RICO claim. Plaintiffs need not address Defendants' attempt to reargue the sufficiency of the RICO pleading since those arguments already have been rejected by this Honorable Court in its July 30, 1993 Order. Affirmation of Jeffrey B. Morganroth ("JM Aff"), Exh 1. It is, therefore, the law of the case that Plaintiffs sufficiently have pled a RICO claim against Defendants.[1]

STATEMENT OF FACTS

This is a case about the dark side of the "American Dream." Key participants in John Z. DeLorean's ("DeLorean") revolutionary car company secretly formed a criminal network for the purpose of obtaining money and property through illicit activities. While the unsuspecting public thought they were supporting and assisting the legitimate operations of the car company that had captured the hearts and minds of the mass public, they in reality were ensnared in a trap set by the criminal

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1. Defendants argued in their May 5, 1993 Motion to Dismiss Plaintiffs' RICO claim or alternatively for a more definite statement that (1) Plaintiffs purportedly failed to adequately plead or identify the enterprise; (2) Plaintiffs purportedly did not satisfy the requirement of distinction between the person and the enterprise; (3) Plaintiffs purportedly did not sufficiently plead a violation of 18 U.S.C. §1962(a), (b), (c) or (d); (4) Plaintiffs purportedly did not sufficiently plead facts showing that Plaintiffs' injuries were caused by a violation of 18 U.S.C. §1962; (5) Plaintiffs purportedly did nor sufficiently plead the requisite pattern of racketeering activity because of the supposed lack of continuity and relatedness; and (6) Plaintiffs purportedly attempted to plead a RICO claim to cover a situation that RICO was not intended to cover. Notwithstanding this Honorable Court's July 30, 1993 Order rejecting all of these arguments, Defendants raise the identical arguments in connection with the instant Motions.

network to steal their money and acquire property through illegal and fraudulent schemes. Ultimately, the car company failed because the criminal network illegally and fraudulently diverted funds to line its own pocket that were intended and necessary for the operation of the car company. When the members of the criminal network could no longer forestall allegations of fraud and litigation in connection with the failed car company, they hired unsuspecting attorneys. The unsuspecting attorneys thought they were defending the legitimate business operations of the failed car company based upon the facts and documents provided to them. In reality, however, the criminal network had hired the attorneys in an attempt to stave off discovery of the illicit activities, to defend them from allegations of wrongdoing, and to protect their ill-gotten gains. Making matters worse, the criminal network fraudulently induced the attorneys to perform legal services in reliance upon false promises to pay legal fees and expenses so that they could keep their ill-gotten gains intact.

The criminal network was formed as an association in fact enterprise, as that term is defined in 18 U.S.C. §1961(4), in or about 1978. The enterprise initially consisted of at least the following members: DeLorean, Ecclesiastes 9:10-11-12, Inc. (then known as Logan Manufacturing Co., hereinafter referred to as "Logan"), Cristina Corporation, Cristina Holdings Corporation, Colin Chapman ("Chapman"), Fred Bushell ("Bushell"), GPD, and Roy Nesseth ("Nesseth"). Later, others such as Edward Freidberg and Freidberg Law Corporation (collectively referred to as "Freidberg"), joined the enterprise and participated in various schemes to defraud.

The first scheme to defraud that the enterprise engaged in was the DRLP Scheme. DeLorean Research Limited Partnership

("DRLP") was a limited partnership formed in 1979 for the purpose of overseeing the research and development of the DeLorean sports car. The members of the enterprise concocted a scheme to defraud DRLP and its partners by causing DRLP to enter into a bogus contract with GPD to perform the research and development. JM Aff, Exh 2; Exh 3 at 46-48, 51-52. GPD was a Panamanian shell corporation established and controlled by Chapman and Bushell that supposedly was the agent of Lotus Cars Limited ("Lotus"') and would subcontract the work to Lotus. JM Aff, Exh 4 at 182-184; Exh 5 at 25-30. The contract called for DRLP to provide approximately $17.8 million to satisfy GPD's fee and the cost of the research and development. A private placement memorandum was prepared by members of the enterprise and presented to DRLP and its partners for the supposed purpose of soliciting and raising such funds. $8.5 million of the money raised pursuant to the private placement memorandum was secretly diverted by members of the enterprise through an escrow agreement and a complex series of back to back bank transactions. JM Aff, Exh 3 at 51-52, 134-145; Exh 6. Another $4 million of said monies went directly into the personal accounts of Chapman and Bushell. JM Aff, Exh 3 at 141. The $8.5 million, which had become approximately $9.4 million with interest,[2] eventually arrived in the United States and was used to pay off loans which had been borrowed to acquire Logan from Thiokol Corporation in 1978, and to purchase jewelry and other investments for DeLorean and Cristina Holdings Corporation. JM Aff, Exh 3 at 145-152, 155-156; Exh 7; Exh 5 at 47. In order to further hide the trail of said funds, Logan then executed a promissory note in favor

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2. $8.9 million of these funds were funneled into the United States. The $500,000 balance was used to satisfy fees and costs incurred in connection with washing the funds through the laundering mechanism. JM Aff, Exh 3 at 139.

of Cristina Corporation, which was its parent corporation and wholly owned by DeLorean. *Id.* Cristina Corporation, in turn, executed a promissory note in favor of DeLorean. *Id.*

At or about the same time as the enterprise was perpetrating the DRLP Scheme, the enterprise also was perpetrating the DMCL Scheme. DeLorean Motor Company Limited ("DMCL") was responsible for coordinating the manufacture of the DeLorean sports car. The members of the enterprise caused DMCL to enter into a bogus contract with Lotus to manufacture the prototype of the DeLorean sports car. JM Aff, Exh 2; Exh 4 at 182-183. Chapman was chairman and the controlling shareholder of Lotus, and Bushell was its finance director. *Id.* The members of the enterprise misrepresented to DMCL that DRLP's $17.8 million contract with GPD for the research and development of the DeLorean sports car only would satisfy a portion of the manufacture of the prototype even though the members of the enterprise knew that the actual and true contract with GPD and Lotus was for only $10.5 million and that the true contract price would fully cover the entire cost of the research, development, and manufacture of the prototype. The members of the enterprise thereafter caused phony invoices to be submitted to DMCL in the approximate amount of $12.6 million for the additional costs supposedly not covered by the DRLP contract. *Id.* The members of the enterprise fraudulently diverted the invoiced amounts for their own use. *Id. See also*, JM Aff, Exh 3 at 103-104, 111-115. Chapman, Bushell, and DeLorean all received proceeds from this scheme after the enterprise's expenses were satisfied. JM Aff, Exh 2.

By 1982, DMCL had been placed in receivership because it lacked the necessary capital to operate as a result of the fraudulent diversion of funds in connection with the DRLP

and DMCL Schemes. Had the members of the enterprise not stolen and diverted the funds, then DMCL would not have been placed in receivership. Members of the enterprise attempted to raise financing to be used for the purpose or reopening the DMCL plant in Ireland and eliminating the receivership altogether. The members of the enterprise desired to accomplish this objective so that they could continue to derive money and property through illicit activities and because they were becoming concerned that the illicit activities already perpetrated would be discovered by the receivers. Accordingly, members of the enterprise devised a scheme to raise money unlawfully from Eureka Federal Savings & Loan ("Eureka").

The members of the enterprise conspired to defraud Eureka and its principals out of substantial monies by attempting to cause Eureka and its principals (believed to be Mafia by DeLorean) to provide $10 million to the enterprise for the supposed purpose of reopening the DMCL plant in exchange for all of the capital stock of DMCI, which stock supposedly represented ownership interest in the DeLorean car company. JM Aff, Exh 8; Exh 4 at 170-176. In reality, DMCI was a shell corporation with no assets that had been formed by the members of the enterprise with the intent of transferring all of the valueless stock to Eureka and its principals in exchange for the funds. *Id.* In the summer and fall of 1982, members of the enterprise in fact transferred to Eureka and its principals the valueless stock of DMCI in furtherance of the conspiracy. *Id.* Members of the enterprise understood and believed that Eureka was backed by the Mafia and that the $10 million was realized through illegal activity. *Id.* See also, JM Aff, Exh 9 at 14; Exh 10 at 279-280. The members of the enterprise further understood and believed that the Mafia was interested in the DMCI transaction in order to launder money obtained through illegal means, and

consequently the Mafia would not and could not protest when they discovered that they had been defrauded since their entire money laundering scheme would be disclosed. *Id.* In fact, in order to further entice Eureka and its principals to provide funds, Logan was offered as a vehicle for Eureka money laundering operation. JM Aff, Exh 11; Exh 12 at 6.

The supposed Mafia members eventually identified themselves as FBI agents and arrested DeLorean, which precipitated several major setbacks for the enterprise. Not only was DeLorean arrested and charged in California, but the receivers of DMCL pressed Chapman for information regarding the disposition of the $8.5 million from the GPD contract and DMC was placed in bankruptcy. Damage control was required by the members of the enterprise to protect their interests and to prevent the discovery of their illicit activities. Chapman, Bushell, and GPD took immediate action in the United Kingdom to implement a cover-up. JM Aff, Exh 2 at 37-45. Meanwhile, DeLorean and his affiliates quickly fabricated false documents and tapes as part of a cover-up plan in the United States. JM Aff, Exh 13 at 12-16, 24-26, 29-32; Exh 9 at 68-76, 79; Exh 14-17. The members of the enterprise also planned (1) to prevent discovery of their activities by ending the bankruptcy proceedings or at the very least causing Logan to be removed from the clutches of the bankruptcy trustee, and (2) to defend their conduct and prevent the loss of their ill-gotten gains by hiring attorneys.

At least two fraudulent schemes were perpetrated by members of the enterprise in an effort to prevent discovery of their illicit activities by taking action in the bankruptcy proceedings.

Appendix L

One such scheme to defraud was the Gorman Scheme. In or about 1983, members of the enterprise concocted a scheme to purchase the assets of DMC out of bankruptcy through a supposedly independent group of investors known as the Gorman group. In reality, the Gorman group was not a group of independent investors, but rather, it was a front for DeLorean and Logan who were acting on behalf of the enterprise along with Nesseth. JM Aff, Exhibit 18 at 390-392; Exh 19 at 41-47. Eventually, the Gorman Scheme failed when the Honorable Ray Reynolds Graves ordered the Gorman transaction to be aborted upon discovery of DeLorean's, Nesseth's, and Logan's participation. JM Aff, Exh 20. Moreover, Judge Graves also ordered the forfeiture of a $100,000 earnest money deposit secretly tendered by Logan since the participants had been acting fraudulently and in bad faith. *Id.*

Another such scheme to defraud was the Creditors Scheme. In or about 1984, the members of the enterprise conspired to defraud the creditors of Logan, DMC, and DSQ by misrepresenting to them that Logan's assets were being sold to an independent company known as Pacific International Equipment Inc. ("Pacific"), when in fact the sale was being made to and through Logan's affiliates, Nesseth and DeLorean, to further the conspiracy and protect the menders of the enterprise. JM Aff, Exh at 191-192 Exh 19 at 132-134 Logan, DeLorean and Nesseth, on behalf of the enterprise, were acting through the nominee, Pacific, so that members of the enterprise could acquire the assets of Logan at less than fairmarket value and to protect against the possibility of discovery or evidence establishing the wrongful diversion of the $8.5 million. The Creditors Scheme also failed when DeLorean's, Logan's, and Nesseth's involvement was uncovered. JM Aff, Exh 21.

Appendix L

Gradually, allegations began to surface regarding the various schemes to defraud, and a multitude of lawsuits were commenced. At such time, various attorneys were retained in order to protect the interests of the members of the enterprise and defend their conduct. In keeping with the general purposes of the enterprise, the members of the enterprise engaged in schemes to defraud these attorneys by falsely promising payment for legal services in order to keep the ill-gotten gains intact. The members of the enterprise not only intended to cheat the attorneys out of legal fees and costs, but they also lied to the attorneys about their misconduct and presented fake documents and tapes in support of their positions. JM Aff, Exh 9 at 18-19, 25, 44-46, 68-69, 71-76, 79-83; Exh 14-17; Exh 10 at 272, 288-289. Every attorney hired by the members of the enterprise was an intended victim of a scheme to defraud, including, but not limited to, the attorneys delineated below.

One attorney who was a victim of such a scheme to defraud was Howard Weitzman ("Weitzman"). The Weitzman Scheme began in or about 1982 and continued through 1991. In or about 1982, Weitzman was retained to defend DeLorean in the California cocaine case which arose out of the commission of the Eureka Scheme, and he eventually was named lead counsel. Thereafter, Weitzman also was hired to represent DeLorean and Logan in the multitude of civil lawsuits arising out of the illicit activities of the enterprise. Weitzman served in that capacity until in or about 1985. In addition, Weitzman also was retained as DeLorean's lead trial counsel in the Detroit criminal action, which focused on the diversion of the $8.5 million from the GPD contract. When Weitzman was retained as lead counsel in the California cocaine case, DeLorean represented that he would be paid $2,500,000 for his legal services and expenses, but DeLorean never intended to pay Weitzman. JM Aff Exh 9 at

23, 26-28, 105; Exh 10 at 267-268, 275; Exh 22. DeLorean lied, cheated, and revised history in an effort to avoid the fee arrangement. JM Aff, Exh 9 at 23; Exh 10 at 272; Exh 11 at 59-60. At one point, it apparently became clear to DeLorean that he might lose his Pauma Valley property to creditors so he transferred the property to Weitzman as a retainer for his fee; however, DeLorean always intended on getting the property back one way or another. JM Aff, Exh 9 at 85-89. In fact, DeLorean apparently caused a sale of the property to be aborted so that Weitzman could not convert it to cash. *Id.* At the same time, DeLorean represented to Weitzman that he would be paid a minimum of $2.5 million for the California cocaine case whether the property sold for that amount or not, since DeLorean would make up the difference. JM Aff, Exh 22; Exh 23 at 73-75. In addition, DeLorean also represented to Weitzman that he would be paid as much as an additional $5 million for services rendered in future litigation such as the Detroit criminal case. *Id.* Weitzman managed to obtain $1.1 million from the ultimate sale of the Pauma Valley property, an amount that did not even cover his expenses (JM Aff, Exh 13 at 59-60), but he could not recover even the remaining minimum balance of $1.4 million for services rendered in the cocaine case, let alone the fees and expenses incurred in connection with the Pauma Valley case or the Detroit criminal trial (JM Aff, Exh 9 at 105). Although Weitzman had been betrayed and conned, he eventually wrote off trying to be paid through DeLorean since he viewed DeLorean as a sick individual and a pathological liar with no conscience or morals. JM Aff, Exh 10 at 169, 268-272, 276. In fact, although Weitzman obtained acquittals for DeLorean against great odds in the California cocaine case and the Detroit criminal trial, and provided extensive representation for DeLorean and Logan in connection with major civil lawsuits, DeLorean and Logan not only refused to fulfill their repeated representations

regarding attorney fees and expenses, but DeLorean instituted a sham malpractice counterclaim against Weitzman in an attempt to counteract the lawsuit filed by Weitzman's firm for the unpaid attorney fees. JM Aff, Exh 4 at 45-46. Previously, DeLorean had testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services through the conclusion of both criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job that Weitzman performed for him. JM Aff, Exh 22.

Another attorney who was a victim of such a scheme to defraud was Thomas Kimmerly ("Kimmerly"). The Kimmerly Scheme began in 1979 and continued through 1992. From 1979 through 1992, Kimmerly was retained by DeLorean and Logan to provide legal services in connection with a multitude of tax matters for the benefit of DeLorean, Logan, and other members of the enterprise. In addition, the members of the enterprise also consulted with and requested legal services from the unsuspecting Kimmerly in connection with the GPD contract, the Lotus contract, and the Eureka transaction. Again, DeLorean, Logan, and the other members of the enterprise misrepresented to Kimmerly that he would be paid his customary hourly rate plus expenses, and misrepresented the facts and nature of the transactions that Kimmerly worked on. Kimmerly trusted DeLorean as his friend to see to it that full payment was made. But Kimmerly eventually realized that he had been duped and that DeLorean was a pathological liar and a sick man. JM Aff, Exh 4 at 12-13, 17-18, 22-23, 27-28, 236-241, 245, 251; Exh 24 at 321; Exh 25 at 260-262, 264, 266, 293, 320-321. Currently, an unpaid balance of approximately $3 million is owed to Kimmerly for legal services provided on behalf of DeLorean, Logan, and other members of the enterprise. JM

Aff, Exh 4 at 12-13, 17-18, 22-23, 27-28. As testified, Kimmerly has not instituted legal proceedings against members of the enterprise because it is clear to him that DeLorean would manufacture a sham malpractice claim to file against him which would result in protracted litigation continuing throughout the remainder of their lives. JM Aff, Exh 4 at 22-23, 29, 205, 208; Exh 25 at 347.

Another attorney who was a victim of such a scheme to defraud was Kenneth McConnell ("McConnell"). McConnell and his law firm of Howlett, Hartman, Beier & McConnell were retained in 1983 to provide representation with respect to financial and bankruptcy matters involving the activities of the members of the enterprise. Again, DeLorean planned for the members of the enterprise to receive the benefit of legal services while keeping ill-gotten gains intact by misrepresenting to McConnell that full payment for legal services would be made, even though no intention to do so existed. McConnell testified that an outstanding balance of approximately $4,300 was never satisfied by DeLorean for legal services rendered. JM Aff, Exh 26 at 5, 7, 9; Exh 24. McConnell and his firm repeatedly demanded payment through reminder statements, but DeLorean, true to form, responded with a scathing reply threatening the institution of malpractice proceedings seeking approximately $1 million in damages. JM Aff, Exh 26 at 9, 11, 17; Exh 4 at 29, 38-42, 208, 215; Exh 25 at 347-349; Exh 9 at 40-41, 100; Exh 10 at 275. McConnell and his firm simply wrote off the unpaid sum rather than engage in protracted litigation of such magnitude. JM Aff, Exh 26 at 9, 11, 17.

Bill Simon ("Simon") and his firm, Hertzog, Calamari and Gleason ("HC&G") also were victims of such a scheme to defraud. Simon and his firm were retained in or about 1982 to

defend DeLorean and Logan in actions arising out of the illicit activities perpetrated by the members of the enterprise, including, but not limited to, the DMCL and the DRLP Schemes. Although DeLorean and Logan represented that they would pay Simon's customary hourly rate for legal services, DeLorean and Logan again had no intention of doing so since they did not want to diminish their ill-gotten gains. In or about October 1983, Simon and his firm withdrew as counsel in those matters for non-payment or legal fees. DeLorean wrote a letter to the presiding judge requesting that Simon not be permitted to withdraw since, according to DeLorean, he did not have any funds to pay for legal services at that time. JM Aff, Exh 5 at 155; Exh 28. Discovery in this action has revealed, however, that DeLorean had access in just one of numerous bank accounts to more than sufficient funds to pay Simon. JM Aff, Exh 5 at 169-170; Exh 4 at 157-158, 166. After Simon was permitted to withdraw, DeLorean then took the position that Simon should not be paid since he committed malpractice. JM Aff, Exh 4 at 167; Exh 9 at 40. In or about 1984, Simon and HC&G instituted legal proceedings against DeLorean in an attempt to collect the unpaid balance due them in the amount of $87,556.60. True to form, DeLorean manufactured a sham malpractice claim against Simon by feeding false and fabricated information to replacement counsel in order to pursue same. JM Aff, Exh 3 at 57, 59-60, 68-69, 71-82, 84-85, 96-97; Exh 29 at 268-271, 466-471, 474-478; Exh 30 at 815; Exh 13 at 107-112. Eventually, summary judgment was rendered against DeLorean when he failed to produce evidence that he supposedly possessed.

Jack Weinberg ("Weinberg"), Alan Greenberg ("Greenberg"), and their firm, Graubard, Mollen, Dannett, Horowitz & Pomerantz ("GMDH&P") also were victims of such

a scheme to defraud. Weinberg, Greenberg and their firm were retained in or about 1987 to provide legal representation to DeLorean and Logan. Unbeknownst to the attorneys, they were hired in order to protect income and property derived through the illicit activities committed by members of the enterprise and to defend illicit activities perpetrated by members of the enterprise, including, but not limited to, the DMCL and DRLP Schemes. Weinberg, Greenberg, and GMDH&P provided legal services to DeLorean and Logan through January 1993 in reliance upon repeated representations by DeLorean and Logan that all legal fees and expenses would be paid. In truth, DeLorean and Logan again had no intention of paying Weinberg, Greenberg and their firm for legal services since such payment would diminish the income and property derived from the illicit activities committed by the members of the enterprise. JM Aff, Exh 24 at 399; Exh 31; Exh 32 at 349. During the course of providing legal services to DeLorean and Logan, Weinberg and Greenberg demanded payment for legal services rendered but the unpaid fees and expenses mounted. JM Aff, Exh 32 at 377-379, 396-399, 411-413. When Weinberg and Greenberg continued to press for payment of the large unpaid balance, DeLorean and Logan repeatedly represented that they did not yet have the funds to satisfy the unpaid balance, Cut that all amounts would be paid in full as soon as the sale of Logan was closed. *Id.* In fact, DeLorean represented that he was an honorable man who always paid his bills. *Id.* at 379. Ultimately, Logan was sold but no monies were paid to Weinberg, Greenberg or their firm, which left an unpaid balance of $325,000. *Id.* at 414. Instead, during the very same period in which DeLorean claimed to lack funds, he paid Freidberg approximately $1.3 million to institute and prosecute a sham malpractice claim against Weinberg, Greenberg, and GMDH&P in New York. JM Aff, Exh 33 at 52-68; Exh 34. Weinberg,

Greenberg, and GMDH&P have since filed counterclaims against DeLorean and Logan, charging RICO violations, fraud, and breach of contract.

The Plaintiffs in the instant action also were victims of such a scheme to defraud. Morganroth was retained in or about November 1982 to provide legal representation to DeLorean, Logan, and other members of the enterprise. Morganroth and his firm provided extensive legal services from November 1982 through January 1993 in connection with a multitude of matters and cases arising out of the illicit activities perpetrated by the members of the enterprise (JM Aff, Exh 35 at 89-95) based upon what Morganroth has since learned were DeLorean's and Logan's fabricated versions of events. Morganroth rendered legal services in reliance upon repeated promises and representations that he would be fully compensated for all legal services performed. JM Aff, Exh 35 at 28-36, 164-168, 187-188; Exh 29 at 265-266. Unbeknownst to Morganroth, DeLorean and Logan never had any intention of paying him for legal services, and DeLorean and Logan also repeatedly misled him as to the true facts regarding the matters that Morganroth handled. JM Aff, Exh 35A. Morganroth relied upon DeLorean's and Logan's representations and provided extensive legal services day and night for approximately ten years because Morganroth thought he had a relationship of mutual trust and friendship with DeLorean; because DeLorean and Logan had confirmed and acknowledged the outstanding amounts on a regular basis orally, in writing, under oath, and in sworn testimony; because DeLorean and Logan constantly praised Morganroth's skills and competency; because DeLorean and Logan pleaded and begged Morganroth to continue providing legal services; because partial payments were received; and because DeLorean repeatedly told individuals that Morganroth was the best lawyer

in the country and had saved his life and assets. JM Aff, Exh 35 at 118, 149, 164; Exh 29 at 263-266, 321-323, 371-374; Exh 30 at 817-819, 843-844; Exh 19 at 23-24, 30-34; Exh 36 at 69-70, 72; Exh 37. Accordingly, when DeLorean and Logan represented at various times throughout the ten year period that they did not have any funds to pay Morganroth but that full payment would be made as soon as funds became available or unrestrained, Morganroth believed them and continued to provide legal services. JM Aff, Exh 29 at 264-266; Exh 30 at 843-844; Exh 35 at 164-165. Eventually, notwithstanding the repeated promises and representations, DeLorean and Logan failed to satisfy their outstanding balance even though funds had become available and unrestrained. When Morganroth pressed for payment as monies become available and assets and properties were released, DeLorean and Logan represented that he would be paid at the closing of the sale of the New York Cooperative, but just prior to the closing Morganroth was told that no funds would be available. *See*, Complaint at 12-14, 24-25 as verified by Mayer Morganroth. Morganroth then was told that he would be paid at the closing of the sale of Logan's assets, but just prior to the closing he was told that the funds would not be disbursed to him until the end of January, 1993 due to tax considerations. JM Aff, Exh 38; Exh 29 at 456-457. Just prior to the end of January, Morganroth was told that he would be paid during the first couple of days of February in connection with a transaction involving Delorean's New Jersey estate. *See*, Complaint at 12-14, 24-25 as verified by Mayer Morganroth. Meanwhile DeLorean, Logan, and the other members of the enterprise had been plotting with Freidberg to institute a sham malpractice claim against Morganroth instead of satisfying the unpaid balance as promised. As discovery has revealed, in October 1990, DeLorean and Logan retained Freidberg to sue Morganroth when the time was right so as to

avoid payment to Morganroth for the unpaid balance. JM Aff, Exh 31; Exh 23 at 255-256, 258-251, 263. The plan was to use Morganroth to resolve all of DeLorean's and Logan's legal problems arising out of their illicit activities without having to pay Morganroth for the legal services rendered. JM Aff, Exh 31; Exh 30 at 820-822, 833-836, 839-842, 845. Thereafter, a lawsuit would be filed for the purpose of avoiding all legal fees. JM Aff, Exh 23 at 256, 258-261; Exh 33 at 119-120, 122-123; Exh 39 at 18, 66. In furtherance of the Morganroth Scheme, Freidberg called Morganroth, after having been retained to sue Morganroth, and obtained pertinent information from Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Weitzman litigation. JM Aff, Exh 40 at 617; Exh 24 at 337; Exh 33 at 82-83, 89-94, 100-108, 118. Ultimately, Defendants brought the shame malpractice claim against Morganroth in February 1993 in New York, after Morganroth had resolved DeLorean's and Logan's critical legal problems.[3]

ARGUMENT

I. PLAINTIFFS' RICO AND FRAUD CLAIMS DO NOT VIOLATE THE ATTORNEY-CLIENT PRIVILEGE OR THE RULES OF PROFESSIONAL ETHICS.

Defendants contend in all three of their motions that Plaintiffs' RICO and fraud claims should be dismissed because they violate "well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients . . . ." (*See, e.g.*, Def. RICO Br. at

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3. The sham malpractice claims instituted by DeLorean and Logan against Morganroth in New York were dismissed on January 27, 1994 by the Honorable Beatrice Shainswit as time-barred.

7). The argument founders on two separate grounds. First, even after deposing Mayer Morganroth for five full days and collecting thousands of pages of documents from Plaintiffs, Defendants fail to identify *any* "confidences" or "secrets" that have been or may be revealed by Plaintiffs in the course of pursuing these claims. Defendants apparently believe that the entire subject matter of DeLorean's repeated and well-documented frauds was somehow magically transformed into "confidences" and "secrets" merely because there was an attorney-client relationship between Plaintiffs and Defendants when some of DeLorean's fraudulent conduct occurred. But that is not the law. The attorney-client privilege protects only confidential "*communications*" between an attorney and a client, not the facts underlying those communications. Similarly, "secrets," as it is used in the Code, refers only to detrimental or embarrassing information regarding the client Gained in the professional relationship." MPRC 1.6(a). Contrary to Defendants' unsubstantiated accusation, the evidence that will be used at trial to support Plaintiffs' RICO and fraud claims is either a matter of public record or was acquired through discovery in this action, after the termination of the attorney-client relationship between Plaintiffs and Defendants.

Second, and equally fatal to Defendants' thesis, this is a case in which DeLorean and Logan contend — originally as affirmative claims in New York and here and now by way of defense and set off — that Morganroth and his firm committed malpractice. The law is well-settled that in such circumstances attorneys are *permitted* to use confidences and secrets necessary to prosecute claims for fees and to defend themselves against the charges of malpractice. As we show below, in this instance any supposed "confidences" and "secrets" that would be used to prove RICO violations or common law fraud are equally

germane to the fee claim itself and to the defense of the malpractice allegations. Moreover, we know of no case — and Defendants cite none — holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as fraud, as well.

A. *Plaintiffs Are Not Using Confidences or Secrets to Support Their RICO and Fraud Claims.*

As a general rule, confidential communications between an attorney and a client made during the course of the professional relationship for the purpose of giving or soliciting legal advice are privileged from disclosure. *United States* v. *Goldfarb*, 328 F.2d 280, 281 (6th Cir.), *cert. denied*, 377 U.S. 976 (1964). However, the Sixth Circuit emphasized in *Goldfarb* that "the attorney-client privilege is an exception carved from the rule requiring full disclosure, and as an exception, should not be extended to accomplish more than its purpose." *Id.* at 282. As such, the attorney-client privilege "does not envelope everything arising from the existence of an attorney-client relationship." *Id.*

It is well established that the attorney-client privilege "precludes disclosure of *communications* between attorney and client and does not protect against disclosure of the facts underlying the communication." *Humphreys, Hutcheson & Moseley* v. *Donovan*, 755 F.2d 1211, 1219 (6th Cir. 1985) (emphasis in original). *Accord*, *United States* v. *Cunningham*, 672 F.2d 1064, 1073 n.8 (2d Cir. 1982) (privilege attaches not to the underlying information but to the communications

between attorney and client about the information), *cert. denied*, 466 U.S. 951 (1984); *Sneider* v. *Kimberly-Clark Corp.*, 91 F.R.D. 1, 4 (N.D. Ill. 1980) ("only the communications, not [the] underlying facts, are privileged."). Thus, merely funneling documents past counsel will not shield those documents from disclosure. *Sneider*, 91 F.R.D. at 5. And the privilege does not extend to "information and statements obtained by an attorney from public documents or from third persons." 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2017, at 137 (1970) (footnote omitted).[4]

In *Goldfarb*, *supra*, an attorney was held in contempt for failing to answer questions concerning a real estate transaction between his client and another individual. The attorney argued on appeal that the privilege should be extended to cover more than communications between the client and his attorney, contending — much like Defendants here — that "this cloak of protection should be draped around all occurrences and conversations which have any bearing, direct or indirect, upon

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4. Defendants mistakenly claim that the "prohibition against disclosure exists even if the information is part of a public record, is available from other sources, or comes to the attorney from other sources." (Def. RICO Br. at 9). While it is true that attorney-client *communications* cannot be revealed simply because the underlying factual information is available from other sources, it is not the case that *facts* available from other sources become privileged merely because they are communicated to an attorney. *See e.g.*, *Cunningham*, 672 F.2d at 1073 n.8:

> [W]e do not suggest that an attorney-client privilege is lost by the mere fact that the information communicated is otherwise available to the public. The privilege attaches not to the information but to the communication of the information.

the relationship of the attorney with his client." *Goldfarb*, 328 F.2d at 281-82. The Sixth Circuit rejected this expansive reading of the privilege:

> The privilege does not envelope everything arising from the existence of an attorney-client relationship. Communications made to an attorney in the course of his professional employment by persons other than the client or his agent are not privileged. The rule extends only to communications made by or on behalf of the client.

Id.

Because the privilege attaches only to communications between client and counsel, many areas of the attorney-client relationship — including the amount of attorneys' fees owed by a client to the client's attorney — are completely outside the scope of the privilege. "In general, the fact of legal consultation or employment, clients' identities, attorney's fees, and the scope and nature of employment are not deemed privileged." *Humphreys, Hutcheson*, 755 F.2d at 1219. *See also, United States* v. *Haddad*, 527 F.2d 537, 538-39 (6th Cir. 1975) (except in limited circumstances, the amount of attorneys' fees paid or owed by a client to his attorney are not privileged), *cert. denied*, 425 U.S. 974 (1976).

In this case, Defendants have the burden of establishing that Plaintiffs are improperly utilizing confidential material to prosecute their RICO and fraud claims. *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980) (party claiming privilege has burden of establishing its applicability to the particular circumstances); *FTC* v. *Lukens Steel Co.*, 444 F. Supp. 803, 806 (D.D.C. 1977)

("The party seeking the benefit of the privilege has the burden of demonstrating its applicability.").[5]

Moreover, because discovery is complete and Defendants have moved for partial summary judgment, Defendants also have the burden of demonstrating the absence of any genuine issue of material fact. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). But as we show below, even after deposing Mayer Morganroth for five full days and collecting thousands of documents from Plaintiffs during discovery, Defendants have not identified any confidences or secrets that Plaintiffs are using to support their fraud and RICO claims.

1. Defendants have not identified any confidences or secrets that Plaintiffs are utilizing.

The affidavit of John Z. DeLorean submitted in support of Defendants' motion is notable in one critical respect: it does not identify even one attorney-client confidence or secret that

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5. Citing to inapplicable "disqualification" cases, defendants mistakenly contend that they do not have the burden or proving that plaintiffs are improperly revealing privileged information. (Def. RICO Br. at 13). But defendants have not moved to disqualify any counsel. Rather, they are invoking the attorney-client Privilege to *dismiss* claims based on their unsubstantiated assertion that Plaintiffs will disclose supposedly privileged communications in support of their RICO and fraud claims. In that circumstance, defendants clearly bear the burden or proving the specific applicability of the privilege. *Katz*, 623 F.2d at 125; *Lukens Steel*, 444 F. Supp. at 806. *Accord*, *International Paper Co.* v. *Fibreboard Corp.*, 63 F.R.D. 88, 94 (D. Del. 1974) ("A proper claim of privilege requires a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality.").

Appendix L

Plaintiffs are revealing by prosecuting their RICO and fraud claims. In fact, DeLorean addresses this subject in a single, entirely generalized and conclusory sentence: "[D]uring the course of the representation of myself and Logan Manufacturing Company by Plaintiffs MAYER MORGANROTH and MORGANROTH & MORGANROTH, innumerable attorney/client communications were had between me and Plaintiffs and between officers and directors of Logan Manufacturing Company and Plaintiffs." DeLorean Aff, ¶ 8. DeLorean fails to specify any of these "innumerable" attorney-client communications, much less connect the communication to the prosecution of Plaintiffs' RICO and fraud claims.

Defendants apparently intend to rely, instead, on the affidavit of Edward Freidberg, Esq., to support their argument that Plaintiffs' claims improperly reveal Defendants' confidences and secrets. But because Freidberg is not testifying based on personal knowledge as to any communications between Plaintiffs and Defendants during the course of the attorney-client relationship, his affidavit is incompetent on this point. *See, Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 831 (1950) (attorney affidavit not made on personal knowledge is insufficient to support a summary judgment motion). More importantly, even a cursory look at Freidberg's affidavit shows that he has not identified any "confidences" or "secrets" that are being revealed.

As to the Eureka, DRLP and DMCL Schemes alleged in Plaintiffs' complaint, Freidberg merely states that Morganroth "represented" DeLorean in the Los Angeles and Detroit criminal trials, parts of which related to the Eureka Federal Savings, DRLP and DMCL frauds. Freidberg Aff, ¶¶ 20, 21. But merely because Morganroth "represented" DeLorean in particular

matters does not transform DeLorean's underlying fraudulent acts — *which were publicly revealed in testimony and documents during the course or those trials* — into confidential attorney-client communications. As noted, the attorney-client privilege protects only confidential communications between the lawyer and the client, not "everything arising from the "existence of an attorney-client relationship." *Goldfarb*, 328 F.2d at 281-82. Similarly, regarding the Kenneth McConnell, Bill Simon and Creditors Schemes, Freidberg does nothing more than point out, in general terms, that Morganroth "represented" Defendants during the time-period when these schemes occurred. Freidberg Aff, ¶¶ 22-23, 26.

Freidberg also mentions that Morganroth possessed various "letters and documents" during the course of his representation of Defendants. Freidberg Aff, ¶¶ 20, 21. But Freidberg fails to specify how any of these letters and documents are either confidential or secret. Simply because certain documents were in Morganroth's possession does not make them privileged. *Cf., Sneider,* 91 F.R.D. at 5 (merely funneling documents past counsel will not shield those documents from disclosure). As important, although Freidberg fails to describe the substance of any of the listed documents attached to Defendants' Exhibits 29 and 30, none of those documents appear from their description to be confidential or secret. Most are letters from third parties to DeLorean (*e.g.*, Def. Exh. 29 "5-7-82 Letter to JZD from Kalikow"). By definition these are not privileged attorney-client "communications" or "secrets." Others are public documents, which are obviously neither confidential nor secret (*e.g.*, Def. Exh. 29 "9-17-82 Press Announcement").

As for the attorney fee schemes, in which Morganroth, Thomas Kimmerly, Jack Weinberg, the Graubard Firm, Howard

Weitzman and others were all victims, Freidberg simply states that Morganroth "participated in or observed conversations regarding fee arrangements" between DeLorean and the various attorneys. Freidberg Aff, ¶¶ 24, 25 and 27. What Freidberg neglects to mention, however, is that the amount of fees owed by a client to his attorney is not privileged information to begin with. *Haddad*, 527 F.2d at 538-39. *Accord*, *Humphreys, Hutcheson*, 755 F.2d at 1219. Nor does Freidberg explain how the fact that DeLorean owes attorneys money — a fact that DeLorean testified about at his deposition, openly revealed in letters to third parties, and has been the subject of public litigation between DeLorean and many of these courser — could be deemed a "secret" pursuant to MRPC 1.6.[6]

In sum, Freidberg's unsubstantiated, incompetent affidavit does not identify any confidences or secrets that Plaintiffs are revealing by pursuing their RICO and fraud claims.

2. Plaintiffs will prove their RICO and fraud claims with evidence obtained daring discovery in this action.

Plaintiffs have taken more than a dozen depositions in this action, and have requested and received thousands of pages of documents. Plaintiffs will prove their RICO and fraud claims, not through Defendants' "confidences" or "secrets," but by calling live witnesses at trial and by introducing deposition testimony and documents acquired through discovery. By way of example, perhaps the most critical evidence in support of the fraud claim is a document from *opposing* counsel Freidberg's

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6. For example, DeLorean testified that "I owe lawyers all over the country a lot of money . . . ." JM Aff, Exh 5 at 170. And numerous lawyers have sued DeLorean to recover their fees — suits that are a matter of Public record.

files, produced after this litigation began. That December 1990 retention agreement between DeLorean and Freidberg, as well as the testimony surrounding it, shows that throughout the period in which DeLorean and Logan repeatedly promised to pay Morganroth, thereby inducing Morganroth to keep working, DeLorean had secretly retained Freidberg to bring a malpractice case against Plaintiffs, and had no intention of paying them. *See* Statement of Facts at 18-19.

Other examples of the proof that will be amassed at trial on the fraud and RICO claims — all acquired *after* the termination of the attorney-client relationship — abound:

- Michael Beeley, President of defendant Logan, testified at his deposition that from time to time Logan would receive bills from Plaintiffs; that Logan never objected to any of the bills; that Beeley would discuss the bills with DeLorean and that DeLorean would affirm their validity. JM Aff, Exh 19 at 23.

- The amount of legal fees owed to Plaintiffs would be included on Logan's financial statements and DeLorean would send letters to third parties representing that those financial statements were true and correct. *Id.* at 24. Melvin Mitchell, another Logan officer, confirmed this testimony. JM Aff, Exh 36 at 69-72.

- Beeley further testified that when Logan sent Freidberg his $250,000 retainer in 1990, Morganroth was not told, even though Morganroth was then outside general counsel for Logan. JM Aff, Exh 19 at 48.

- Beeley testified that when it came time to sell Logan at the end of 1992, DeLorean agreed that Morganroth

would be paid out of the proceeds of the sale. *Id.* at 225-26. But at the time of the Logan sale, DeLorean had already secretly retained Freidberg to sue Morganroth for malpractice. JM Aff, Exh 33 at 68-69.

- Freidberg admitted that he told DeLorean and Logan in late *1990*, sometime between his October 13, 1990 retention and the December 17, 1990 fee agreement, not to pay any legal fees to Morganroth. JM Aff, Exh 39 at 18.

- Jack Weinberg, a partner at Graubard, testified that Defendants owe Graubard $325,206.03 in legal lees and disbursements. JM Aff, Exh 1 at 413. Graubard never initiated suit to collect its fees because DeLorean repeatedly assured Weinberg and others that Graubard would be paid. *Id.* at 414-15.

- Specifically, Weinberg had various phone conversations with DeLorean in 1991 and 1992 in which DeLorean repeatedly promised that Graubard would be paid in full. At the time or these conversations, DeLorean failed to tell Weinberg that DeLorean and Logan had previously retained the Freidberg Law Corporation on October 13, 1990 to sue Graubard and Morganroth for malpractice. DeLorean continued to promise Weinberg that Graubard would be paid throughout 1991, 1992 and into early 1993 when DeLorean and Logan sued Graubard for malpractice. *Id.* at 387-91, 396-400.

- Howard Weitzman testified that in or about 1984 DeLorean owed Weitzman at least $2.5 million for legal services rendered by Weitzman on DeLorean's behalf. JM Aff, Exh 32 at 266-267.

- Weitzman did not want to sue DeLorean for the money, because "I think he's a sick individual, and I believe that he would go to extremes to make up things and say things to avoid paying the money, and I believed it then and I believe it now. I have to say that back at that time period, John was still saying he would pay me, and I guess I didn't get the joke or figure it out until late '88, early '89. Somehow I thought he would still pay my firm]." *Id.* at 275.

- When Weitzman's firm, Wyman, Bautzer, finally sued DeLorean to recover fees, DeLorean counterclaimed for malpractice.

- Kenneth McConnell testified at his deposition that he and his firm performed legal services for DeLorean, that he sent DeLorean bills for those services, and that DeLorean failed to pay McConnell or his firm. JM Aff, Exh 26 at 5-9. McConnell also testified that thereafter DeLorean sent a letter to McConnell's firm threatening a malpractice action against the firm. *Id.* at 12-13.

- McConnell testified that he told Mayer Morganroth of DeLorean's failure to pay and of his malpractice threats against McConnell's firm *after* Morganroth was sued by DeLorean in February 1993. *Id.* at 16-17.

- Thomas Kimmerly, who was General Counsel for DMC, tax advisor to Logan, and DeLorean's personal tax attorney for many years, testified that DeLorean owes him between $1.5 and $3 million in legal fees. JM Aff, Exh 4 at 12.

- Kimmerly testified that DeLorean represented that Kimmerly would be paid in full; that he performed additional legal services based on those representations; and that DeLorean never paid him the money he was owed. *Id.* at 12-13.

- Kimmerly never sued DeLorean to recover his fees because of DeLorean's habit of counterclaiming for malpractice against any attorney who sues him to recover fees. *Id.* at 23. Kimmerly testified: "My experience has been that he has sued most attorneys who had to go after him for their fees." *Id.*

In short, Plaintiffs have substantial proof to support their RICO and fraud claims based solely on the evidence collected in this action. Plaintiffs have no need to and will not rely on "confidences" or "secrets" to support their claims.

B. *Plaintiffs Are in Any Event Permitted to Reveal Confidences or Secrets Necessary to Prosecute Claims for Their Fees and to Defend Themselves Against Defendants' Baseless Malpractice Claims.*

Michigan Rule of Professional Conduct 1.6(c)(5) provides that a lawyer may reveal confidences or secrets when necessary to "establish or collect a fee." Hence, evidence introduced by Plaintiffs in support of their fee claims — evidence that includes conversations between Plaintiffs and Defendants in which Defendants represented that all past and future legal fees would be paid in full — is admissible regardless of whether that evidence reveals confidences or secrets.

Furthermore, MRPC 1.6(c)(5) also allows an attorney to reveal confidences and secrets when necessary to "defend the

lawyer or the lawyer's employees or associates against an accusation of wrongful conduct." This rule is premised on the well-established principle that the client can waive the attorney-client privilege. *Humphreys, Hutcheson*, 755 F.2d at 1219. And one of the most common ways the client waives the privilege is through an attack upon the attorneys conduct:

> A client has a privilege to keep his conversations with his attorney confidential, *but that Privilege is waived when a client attacks his attorney's competence in Divine fecal advice, puts in issue that advice and ascribes a course of action to his attorney that raises the specter of ineffectiveness or incompetence*. . . . Surely a client is not free to make various allegations of misconduct and incompetence while the attorney's lips are sealed by invocation of the attorney-client privilege. Such an incongruous result would be inconsistent with the object and purpose of the attorney-client privilege and a patent perversion of the rule. *When a client calls into public Question the competence of his attorney, the privilege is waived.*

Tasby v. United States, 504 F.2d 332, 336 (8th Cir. 1974) (emphasis added), *cert. denied*, 419 U.S. 1125 (1975).

In this case, Defendants brought malpractice claims against Plaintiffs, affirmatively in New York State court even before this Michigan action was filed and then as counterclaims in this action, in each instance seeking more than ***$70 million*** in supposed damages. Although these affirmative malpractice claims have now been dismissed on statute of limitations grounds in both forums, Defendants can and Plainly intend to

continue to use the same allegations of malpractice as a defense and potential setoff in this action. The merits of Defendants' malpractice allegations are therefore still very much alive in this case.

Those claims allege in substance that (1) Plaintiffs improperly advised Defendants to settle the 1987 DMC Bankruptcy Action (Counterclaims ¶ 105); (2) Plaintiffs improperly advised DeLorean not to defend the U.K. Action brought by DSQ (*Id.* ¶ 112); and (3) Plaintiffs "pressured" and "cajoled" Defendants into settling the DSQ Enforcement Action in October of 1990 (*Id.* ¶ 152).

To prevail on these defenses DeLorean and Logan must affirmatively show not only that the advice they received was negligent, but that there was a meritorious defense which would have precluded any recovery or reduced the amount of the judgment had the attorney competently performed. 2 Ronald E. Mallen & Jeffrey M. Smith, *Legal Malpractice* § 24.16 (3d ed. 1989); *cf.*, *Basic Food Indus. Inc.* v. *Grant*, 107 Mich. App. 685, 690, 310 N.W.2d 26, 28 (1981) (client must prove that attorney's negligence was proximate cause of the injury). Defendants will therefore have to prove, among other things, that but for Plaintiffs' supposed negligence, Defendants could have successfully defended the actions they settled or would have paid less than they did. *See*, 1 Mallen & Smith, *supra*, § 8.3, at 412 ("To establish the alleged negligence or other wrong proximately caused the loss, the Plaintiff must establish either that the loss would not have occurred or that the amount would have been less, but for the attorney's conduct.").

Whether Defendants committed the numerous frauds that were alleged against them in the DMC Bankruptcy Proceeding,

the DSQ U.K. Action and the DSQ Enforcement Action is plainly material to this issue, for it bears directly on whether, if the underlying matters DeLorean claims he was "forced" or "misled" into settling at specific amounts had been litigated, Defendants would have suffered damages far in excess of what they actually paid to resolve those claims. Hence, the DRLP, DMCL, Eureka and Creditors Schemes, all of which were at issue in the actions in which DeLorean claims Morganroth gave negligent advice, are directly relevant not merely to the RICO claims but to the defense of the malpractice allegations. Having opened the door by bringing the malpractice charges, DeLorean has waived his right to preclude Morganroth from introducing such evidence, even if it *did* reveal supposed "confidences" or "secrets." *See*, MPRC 1.6(c)(5); *Tasby*, 504 F.2d at 336.[7]

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7. Defendants' reliance on *Cannon* v. *U.S. Acoustics Corp.*, 398 F. Supp. 209 (N.D. Ill. 1975), *aff'd in part and rev'd in part*, 532 F.2d 1118 (7th Cir. 1976), is thus entirely misplaced. In *Cannon*, an attorney who was also a shareholder of his corporate client brought a derivative action alleging, *inter alia*, securities fraud claims. In a separate personal claim, he also sought legal fees that the corporation had failed to pay. The district court disqualified the attorney as a plaintiff on all claims because, in his representation of the corporation, he had acquired confidential information substantially related to the pending suit. 398 F. Supp. at 228. The Seventh Circuit affirmed as to the derivative claims but *reversed* as to the fee claims, noting that the ethical rules permit an attorney to reveal confidences or secrets necessary to establish or collect his fee. 532 F.2d at 1120. Moreover, there necessary to establish or collect his fee. 532 F.2d at 1120. Moreover, there was no assertion of malpractice in *Cannon*; hence the client, unlike DeLorean and Logan here, had not waived its right to assert privilege as to matters relevant to the defense of such claims. *Richardson v. Hamilton Int'l Corp.*, 469 F.2d 1382 (3d Cir. 1972), *cert. denied*, 411 U.S. 986 (1973), on which Defendants also rely, is similarly irrelevant because it involved neither an attorney's claim for fees nor allegations of malpractice.

(Cont'd)

Appendix L

Finally, the fact that DeLorean repeatedly failed to pay not only Morganroth but other attorneys' legal fees, would be admissible even in the absence of RICO or fraud claims under Fed. R. Civ. P. 404(b), which provides that evidence of "other acts" is admissible to show a common plan. *See, e.g., United States* v. *Ellzey,* 874 F.2d 324, 329 (6th Cir. 1989) (in prosecution for conspiracy to defraud farmers who were seeking loans to fend off foreclosure of their farms, evidence of frauds against other farmers, not mentioned in the indictment, was properly admitted under 404(b) "as evidence of a common

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(Cont'd)

Even apart from Defendants' waiver of privilege by bringing malpractice claims, Defendants have also waived the privilege through their conduct of the litigation. They actually *asked direct questions* which they knew would elicit privileged communications concerning the RICO claims. In fact, the papers submitted by Defendants in support of this motion contain an example of such a waiver. In Def. Exh 5, they attach excerpts from the deposition of Mayer Morganroth, in which Friedberg asked Morganroth to testify to privileged communications between Morganroth and DeLorean concerning the Simon Scheme:

> Q. What did Mr. DeLorean tell you the reason why he felt that Mr. Simon was negligent allowing those documents to come into the possession of Mr. Schade?
>
> A. He said that there was a visit to the Bedminster estate pursuant to the Order by the Judge, Bryant, I believe, it may have been Mary Johnson Lowe at that time in September of 1983.

Def, Exh 5 at 467. Clearly, such questions on behalf of DeLorean and Logan waive the attorney-client privilege. *Cf., Drimmer v. Appeston,* 628 F. Supp. 1249, 1251 (S.D.N.Y. 1986) (privilege waived because client allowed attorney to testify to contents of confidential communication).

plan"); *United States* v. *Ausmus*, 774 F.2d 722, 727-28 (6th Cir. 1985) (in tax evasion prosecution, evidence of defendant's failure to pay taxes, both prior to and following the years in question, properly admitted under 404(b) as evidence of a "pattern, plan, and scheme"). Since such evidence would be admissible even on Morganroth's non-fraud claims for fees, under MRPC 1.6(c) (5) Morganroth would be entitled to use supposed confidences and secrets concerning these "other acts" in any event.

* * *

Defendants have failed to identify any "confidences" or "secrets" being revealed by Plaintiffs. Plaintiffs will, in any event, prove their claims not through such "confidences" but through evidence amassed during discovery or made public in numerous earlier litigations. And even if Plaintiffs were revealing "confidences" or "secrets," the canons plainly allow such disclosure where, as here, it is necessary to prosecute claims for fees or to defend against allegations of malpractice. In short, the RICO and fraud claims are not subject to dismissal on Defendants' baseless charge of ethical violations.

II. SUBSTANTIAL EVIDENCE ESTABLISHES THE EXISTENCE OF A RICO ENTERPRISE.

Defendants disingenuously argue that Plaintiffs have not sufficiently pled a RICO enterprise and that no evidence establishes the existence of a RICO enterprise.

In light of this Honorable Court's July 30, 1993 Order, which held that Plaintiffs sufficiently have alleged a RICO enterprise, Plaintiffs need not address Defendants' attempt to reargue the adequacy of Plaintiffs' pleading.

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Defendants miss the mark as well with their contention that no evidence exists to support the well-pled allegation of a RICO enterprise. Plaintiffs have alleged that an association in fact enterprise, as that term is defined in 18 U.S.C. §1961(4), was formed in or about 1978 for the illegitimate common purpose of unlawfully and fraudulently deriving assets, properties, and monies. Plaintiffs further have alleged that the association in fact enterprise has continued uninterrupted through the present. Plaintiffs have identified the members of the enterprise as including DeLorean, Cristina Corporation, Cristina Holdings Corporation, Logan, Chapman, Bushell, GPD, Nesseth, Freidberg, and Freidberg Law Corporation. Plaintiffs also have alleged that the enterprise is comprised of formal or informal associations in fact that function as continuing units over time through a hierarchial or consensual decision-making structure.

The United States Supreme Court has made clear that, a RICO enterprise is "a group of persons associated together for a common purpose of engaging in a course off conduct." *United States* v. *Turkette*, 452 U.S. 576, 583 (1981). The definition of an association in fact RICO enterprise is to be construed liberally and it is a broader concept than that of ordinary conspiracy. *United States* v. *Turkette*, 452 U.S. at 587, *quoting*, Pub. L. No. 91-452 §904(a), 84 Stat. 922, 944 (1970); *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 497-498 (1985); *United States* v. *Russo*, 796 F.2d 1443, 1462 (11th Cir. 1986). So long as a common purpose ties together a group of individuals and/or entities, an enterprise is formed even if not every member of the enterprise knows all of the other members of the enterprise or has knowledge of all the details of the fraudulent schemes. *United States* v. *Rastelli*, 870 F.2d 822, 828 (2nd Cir. 1989), *cert. denied*, 493 U.S. 982 (1989); *United States* v. *Elliott*, 571 F.2d 880, 898, 903-90 (5th Cir. 1978).

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A genuine issue of material fact as to the existence of an association in fact RICO enterprise is established "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Turkette*, 452 U.S. at 483. Circumstantial evidence alone is sufficient to establish a genuine issue of material fact as to the existence of a RICO enterprise since the affairs of the enterprise are likely to be conducted in secrecy and involve a minimal amount of necessary contact between the participants. *United States* v. *Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990), *cert. denied*, 454 U.S. 1136 (1982); *United States* v. *Griffin*, 660 F.2d 996, 1000 (4th Cir. 1981); *Elliott*, 571 F.2d at 898.

The evidence in this case more than sufficiently establishes a genuine issue of material fact as to the existence of an ongoing organization, formal or informal, with a shared common purpose and that the various associates function as a continuing unit through a hierarchial or consensual decision-making structure.

The thread tying the members of the enterprise together was the desire to obtain funds through the fraudulent vehicle of the DeLorean car entities and then to preserve those ill-gotten gains through additional fraudulent schemes. The founding members of the enterprise envisioned a tremendous opportunity to obtain assets, properties, and monies through their connection with the development of the DeLorean sports car and their relationships with one another. The evidence demonstrates that the members of the enterprise have used their positions and relationships to perpetrate various fraudulent schemes in order to derive assets, properties, and monies. An agreement to associate with and participate in the affairs of said RICO enterprise by the members may be inferred from the individual's or entity's acts. *See Hughes*, 895 F.2d at 1141, *citing, United*

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States v. *Joseph*, 835 F.2d 1149, 1152 (6th Cir. 1987). The acts committed by the members or the enterprise reveal their coordinated nature and association, the requisite continuity of structure and personnel, and the following pattern of roles, which was necessary to carry out the racketeering activity and derive assets, monies, and property.

President: DeLorean was the founder of the DeLorean entities that were established to participate in the design, development, and manufacture of the DeLorean automobile. Additionally, DeLorean owned 100% of Cristina Corporation which owned 100% of Logan and Cristina Holdings Corporation (JM Aff, Exh 3 at 144-149; Exh 41), and DeLorean had a long time friendship and business relationship with Nesseth (*see*, pp.42). DeLorean presides over the day to day management of the affairs of the enterprise. All of the schemes were dependent upon DeLorean's relationship and control over DMCL, DRLP, and the other entities affiliated with the research, development, and manufacture of the DeLorean sports car, and DeLorean's relationship with Logan, Cristina Corporation, Cristina Holdings Corporation, and Nesseth. DeLorean, GPD, Chapman, and Bushell cooked up the DRLP and DMCL Schemes. JM Aff, Exh 4 at 182-184; Exh 3 at 51-52, 103, 114-115. After numerous incriminatory documents were discovered at Bushell's residence during a raid, Bushell pled guilty to conspiring with DeLorean and Chapman to commit bath schemes. JM Aff, Exh 2. Not only did DeLorean receive proceeds derived from both schemes (JM Aff, Exh 3 at 147-152; 155-156; Exh 25 at 448), but DeLorean also attempted to cover up the illicit activities by fabricating documents and tapes (JM Aff, Exh 13 at 12-16, 24-25, 29-32, 51-54; Exh 9 at 68-76, 79). In addition, DeLorean helped devise and directly participated in the Eureka Scheme (JM Aff, Exh 4 at 170-177;

Exh 8); the Gorman Scheme (JM Aff, Exh 4 at 188-190; Exh 18 at 391-392); Exh 19 at 41-47; Exh 9 at 92-93); the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 132-134); and each scheme to defraud attorneys (Statement of Facts at 10-19).

Vice President: Chapman was the Chairman and controlling shareholder of Lotus, which was being pursued to perform the research, development, and manufacture of the DeLorean automobile. Chapman also formed and owned GPD. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26; Exh 2. Chapman exercised substantial input and control over the affairs of the enterprise. The initial schemes were dependent upon his relationship with and control of GPD and Lotus. Chapman used his position with GPD and Lotus, and his professional skills, to help devise and perpetrate the DRLP and DMCL Schemes. JM Aff, Exh 5 at 25-26, 28-30, 46; Exh 4 at 182; Exh 3 at 51-52; Exh 2. GPD was used as a vehicle to enable Chapman to benefit without alerting the minority shareholders or Lotus as to what was occurring. JM Aff, Exh 5 at 29. Chapman received a substantial portion of the funds diverted in connection with both schemes. JM Aff, Exh 2; Exh 3 at 141. In or about 1981, Chapman also used his position with GPD and Lotus, and his professional skills, to cover up the illicit activities when the risk of discovery increased. JM Aff, Exh 2 at 37-45. Chapman exercised substantial input and control over the affairs of the enterprise until his death in 1982. Chapman died a member of the enterprise since he had not withdrawn from the enterprise before his death through an affirmative act. *United States* v. *Martino*, 648 F.2d 367, 397 (5th Cir. 1981), *cert. denied*, 456 U.S. 949 (1982), *citing*, *United States* v. *Bradsby*, 628 F2d 901 (5th Cir. 1980). Chapman's death in 1982 had no effect on the continuity of structure and personnel of the enterprise since "the continuity requirement does not mean that

individuals cannot leave the group or that new members cannot join at a later time." *United States* v. *Perholtz*, 842 F.2d 343, 355 (D.C. Cir.), *cert. denied*, 488 U.S. 821 (1988), *quoting*, *United States* v. *Riccobene*, 709 F.2d 214, 223 (3rd Cir.), *cert. denied*, 464 U.S. 849 (1983).

Finance Director: Bushell was the finance director of Lotus, co-owner of GPD, and an accountant. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26; Exh 2. Bushell used his position as finance director of Lotus and co-owner of GPD, along with his professional skills as an accountant, to assist in drafting documents used in the schemes and to structure the complicated financial maneuvers utilized to carry out said schemes. JM Aff, Exh 2. Bushell also used his financial skills to attempt to cover up the illicit activities when the risk of discovery increased in 1981 and 1986. JM Aff, Exh 2 at 35-47, 49-50. Bushell received a substantial portion of the funds diverted from the DRLP and DMCL Schemes. JM Aff, Exh 1; Exh 3 at 141.

Treasurer: Logan was 100% owned by Cristina Corporation (after purchase from Thiokol), which was 100% owned by DeLorean. JM Aff, Exh 3 at 144-149; Exh 41. Logan managed funds derived from the schemes to defraud and made disbursements as required. Logan attempted to cover up the illicit activities of the enterprise by hiding the trail of funds derived from the DRLP and DMCL Schemes. JM Aff, Exh. 3 at 146-152, 155-156; Exh 25 at 273. Logan funded the earnest money deposit in the Gorman Scheme (JM Aff, Exh 4 at 190; Exh 20; Exh 19 at 41-47), paid Nesseth for services rendered on behalf of the enterprise (JM Aff, Exh 19 at 62-64, 69-70, 73-75; Exh 40 at 669-670, 678-679), and funneled funds to DeLorean under the guise of repayment on the Cristina Note

(JM Aff, Exh 3 at 146-152, 155-156). In addition, Logan attempted to preserve the ill-gotten gains of the members of the enterprise by making partial payments to attorneys to string them along and by misleading attorneys as to the full satisfaction of legal fees for services rendered. JM Aff, Exh 4 at 27, 251; Exh 19 at 23-24, 30-32, 48-49; Exh 25 at 270; Exh 36 at 69-70; Exh 30 at 818-821. Logan also was offered as a vehicle for laundering money in the Eureka Scheme, and helped devise the Creditors Scheme. JM Aff, Exh 19 at 133-134; Exh 11; Exh 12. Logan received the benefit of approximately $8.3 million of diverted funds from the DRLP and DMCL Schemes, which funds were used to satisfy the acquisition loan borrowed to purchase the assets of Logan from Thiokol. JM Aff, Exh 3 at 144-146; Exh 5 at 47. Logan also received the benefit or substantial legal services derived from the schemes to defraud attorneys. Statement of Facts at 10-19.

Foot Soldier: GPD was a Panamanian shell corporation formed and controlled by Chapman and Bushell as a conduit. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26, 28-30; Exh 2. GPD assisted in carrying out the DRLP and DMCL Schemes by acting as the contracting party in agreements with DRLP, DMCL, and Lotus, which facilitated the illegal diversion of funds. JM Aff., Exh 5 at 28-30; Exh 4 at 182; Exh 3 at 51-52; Exh 2. GPD assisted in the attempted cover up devised by Chapman and Bushell in 1981. JM Aff, Exh 2 at 37-45.

Foot Soldier: DeLorean owned 100% of Cristina Corporation which owned 100% of Logan and Cristina Holdings Corporation. JM Aff, Exh 41; Exh 3 at 144-149. Cristina Corporation attempted to cover up the illicit activities of the members of the enterprise by hiding the trail of funds derived from the DRLP and DMCL Schemes. JM Aff, Exh 3 at

146-152, 155-156. Cristina Corporation helped funnel funds to DeLorean for his personal services as purported repayment on promissory notes. *Id.* Attorneys acting on behalf of Cristina Corporation were defrauded out of legal fees in connection with matters where Cristina Corporation was a party. In addition, Cristina Corporation attempted to further the Morganroth Scheme by sending a bribe to Kimmerly in an effort to purchase his assistance. JM Aff, Exh 25 at 360; Exh 25A.

Foot Soldier: Cristina Holdings Corporation was 100% owned by Cristina Corporation which was 100% owned by DeLorean. JM Aff, Exh 41; Exh 25 at 448. Cristina Holdings Corporation has invested proceeds derived from various schemes in an effort to generate additional income and hide the trail of funds. Cristina Holdings Corporation purchased art, antiques, and furniture which were then put to personal use by DeLorean. JM Aff, Exh 25 at 448; Exh 13 at 8-9; Exh 42. In addition, Attorneys acting on behalf of Cristina Holdings Corporation were defrauded out of legal fees in connection with matters where Cristina Holdings Corporation was a party.

Foot Soldier: Nesseth acts as the muscle man and dirty tricks operative of the enterprise. JM Aff, Exh 43 at 986-987; Exh 19 at 37-38, 53, 55, 126-128; Exh 13 at 6-7; Exh 9 at 78-79, 89-90, 101-102; Exh 36 at 43-48. Nesseth was brought in by DeLorean since they had a long time friendship and business association and Nesseth acted as DeLorean's alter ego, affiliate, and personal representative with respect to outside deals. JM Aff, Exh 19 at 62; Exh 4 at 107, 111, 188-189, 191-192, 212; Exh 18 at 363-367; Exh 23 at 11-12, 120-121, 135. The association continued notwithstanding admonitions by Weitzman, Morganroth, Beeley, and Mitchell. JM Aff, Exh 44 at 315; Exh 40 at 677; Exh 36 at 48. Often, Nesseth was placed

in official positions to facilitate his role on behalf of the enterprise, including, but not limited to, vice chairman of Logan (JM Aff, Exh 44 at 315; Exh 19 at 37-38), director of DMC (JM Aff, Exh 45; Exh 18 at 363), and an involvement with DMCI (JM Aff, Exh 45). Nesseth played an active role in the DMCL Scheme (JM Aff, Exh 45), the Gorman Scheme (JM Aff, Exh 4 at 188-189; Exh 20; Exh 19 at 41-47), the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 133-134), the Attorneys' Schemes (JM Aff, Exh 4 at 214; Exh 30 at 831-832, 834-836), and the Eureka Scheme (JM Aff, Exh 45).

Foot Soldier: Freidberg and Freidberg Law Corporation joined the enterprise in or about 1989 in order to provide assistance to the members of the enterprise in the Weitzman, Morganroth, and Weinberg Schemes. Freidberg helped plan and implement part of the fraud upon Morganroth by causing Morganroth to perform extensive legal services for the members of the enterprise during a 2 1/2 year period in reliance upon representations and promises of payment from DeLorean and Logan during that period, even though Freidberg had been secretly preparing a sham malpractice claim against Morganroth and had advised that Morganroth not be paid. JM Aff, Exh 23 at 256, 258-261; Exh 19 at 48-49; Exh 33 at 52-68, 119, 120-123; Exh 39 at 18, 66; Exh 30 at 833, 839-840. Freidberg even called Morganroth, after having been retained to sue Morganroth, and obtained pertinent information from Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Weitzman litigation. JM Aff, Exh 40 at 617; Exh 29 at 337; Exh 33 at 82-83, 89-95, 100-108, 118. The fact that Freidberg and his law firm became new members of the enterprise in or about January 1989 has no effect on the continuity of structure or personnel of the enterprise. *See*, *Town of Kearny* v. *Hudson*

Meadows Urban Renewal Corp., 829 F.2d 1263, 1269 (3rd Cir. 1987); *Perholtz*, 842 F.2d at 354.

Accordingly, it is abundantly clear from the evidence that all of the requisite elements of an association in fact enterprise are present. As in *Elliott*, *supra*, it would be a perversion of natural thought and natural language to deny that the above referenced facts give rise to the inference that DeLorean and Logan knew that they were directly involved in an enterprise whose purpose was to profit from crime. The coordinated nature of DeLorean's, Logan's, and the others' acts alone is sufficient to create the inference of an ongoing association with a common purpose. *See*, *United States* v. *Qaoud*, 777 F.2d 1105, 1116 (6th Cir. 1985), *cert. denied*, 475 U.S. 1098 (1986). In fact, an association in fact enterprise consisting of DeLorean and Logan is plainly established by the evidence, even if all of the other co-conspirators were somehow found not to have been members at any time. *See*, *Perholtz*, 842 F.2d at 364.[8]

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8. Notwithstanding this Honorable Court's July 30, 1993 Order, Defendants erroneously persist in arguing that an enterprise consisting solely of DeLorean and Logan (or even Nesseth) would not be distinct from the RICO persons named as Defendants for purposes or the §1962(c) claim since said parties are affiliates. On the contrary, close ties and affiliations do not prevent separate legal entities from forming an association in fact RICO enterprise which is distinct from RICO persons for §1962 (c) purposes (no distinction requirement with respect to §1962(a), (b) or (d) claims). *See*, *Fleischhauer* v. *Feltner*, 879 F.2d 1290, 1297 (6th Cir. 1989), *cert. denied*, 493 U.S. 1074 and *cert. denied*, 494 U.S. 1027 (1990). Defendants' argument has no merit since 100% ownership of the corporate shares of another does not vitiate the fact that the two are separate legal entities capable of associating with each other in an association in fact enterprise and of being named as Defendants without running afoul of the 1962(c) distinction requirement. *Id.*

Appendix L

III. SUBSTANTIAL EVIDENCE ESTABLISHES THE EXISTENCE OF THE PATTERN OF RACKETEERING ACTIVITY.

Defendants erroneously argue that Plaintiffs have not sufficiently pled a "pattern of racketeering activity" and that no evidence establishes the existence of a "pattern of racketeering activity."

Defendants again disregard this Honorable Court's July 30, 1993 Order in an attempt to reargue issues that they already have raised by Motion and which this Honorable Court already rejected by the Order. The sufficiency of Plaintiffs' pleading of a pattern of racketeering has already been sustained. JM Aff, Exh 1.

Defendants miss the mark as well with their contention that no evidence exists to support the well-pled allegation of a RICO pattern of racketeering. Plaintiffs allege that Defendants have engaged in a pattern of committing at least hundreds of acts of racketeering in an effort to defraud Plaintiffs and other third parties. Plaintiffs further allege that this pattern of racketeering has been carried out through at least ten related fraudulent, unlawful, and wrongful schemes to defraud Plaintiffs and other third parties — schemes that involved the same or similar purposes, results, participants or methods of commission, and were otherwise interrelated and were not isolated events. *See*, Statement of Facts.[9] Plaintiffs further allege that Defendants

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9. The evidence demonstrates that "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts." *Silverman* v. *Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich. 1981), *citing, Robinson* v. *Kidder*,

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committed the following five different types of predicate racketeering acts as defined in 18 U.S.C. §1961(1) in furtherance of the conspiracy and the pattern of racketeering activity: (1) violation of 18 U.S.C. §1341 ("Mail Fraud"); (2) violation of 18 U.S.C. §1343 ("Wire Fraud"); (3) violation of 18 U.S.C. §1952 ("False Pretenses"); (4) violation of 18 U.S.C. §1956 ("Money Laundering"); and (5) violation of 18 U.S.C. §1957 ("Unlawful Monetary Transaction").

Evidence sufficient to establish a genuine issue of material fact as to whether the Defendants committed any act delineated in 18 U.S.C. §1961(1) on at least two occasions[10] in furtherance or even a single scheme to defraud will defeat Defendants' contentions.[11] In the case at bar, although it is sufficient for

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Peabody & Co., 674 F. Supp 243, 246 (E.D. Mich. 1987). Moreover, the repeated conduct spanning over 13 years which also by its very nature projected into the future with the threat or repetition satisfies the requirement of continuity. *H.J. Inc.* v. *Northwestern Bell*, 492 U.S. 229, 239-243 (1989); *United States* v. *Busacca*, 936 F.2d 232, 237 (6th Cir. 1991).

10. The RICO statute defines Racketeering activity as the commission of any act delineated in 18 U.S.C. §1961(1). *See*, 18 U.S.C. §1961. Furthermore, the RICO statute defines the pattern element as requiring at least two predicate acts of racketeering within a ten year period. *See*, 18 U.S.C. §1961(5).

11. The Sixth Circuit Court of Appeals expressly has held that the commission of at least two predicate acts occurring within a ten year period in furtherance of a *single* fraudulent scheme is sufficient to satisfy the pattern of racketeering activity requirement. *Newmyer* v. *Philatelic Leasing, Ltd.*, 888 F.2d 385, 396-397 (6th Cir. 1989). *Accord, Dana Corp.* v. *Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886-887 (6th Cir. 1990).

purposes of this Motion to merely identify a genuine issue of material fact as to the commission of at least two predicate acts in furtherance of a single fraudulent scheme,[12] substantial evidence exists to establish a genuine issue of material fact as to the commission of numerous predicate acts in furtherance of multiple interrelated schemes with a common purpose, results, participants or methods of commission as shown below.

The DRLP Scheme

As part of the plan to illegally and fraudulently divert approximately $8.5 million (which became approximately $9.4 million with interest) in connection with the DRLP Scheme (Statement of Facts at 4-5), the members of the enterprise committed predicate acts of Mail Fraud, wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DRLP Scheme in violation of 18 U.S.C. §1341.[13] DeLorean testified that the GPD contract, which was the vehicle for perpetrating the DRLP Scheme, was negotiated through the

12. The evidence supporting the Morganroth scheme alone requires rejection of Defendants' contentions.

13. It is well settled that mail fraud has occurred even if the mailing does not contain any misrepresentations and even if the defendant lacks the actual intent to use the mails so long as the defendant acts with knowledge that use of the mails is reasonably foreseeable in connection with the scheme to defraud. *Pereira* v. *United States*, 347 U.S. 1 (1954); *United States* v. *Martino*, 648 F.2d 367, 401 (5th Cir. 1981). The mailing may even be incidental. *Dana Corp.*, 900 F.2d 882, 886 (6th Cir. 1990), *citing*, *Schmuck* v. *United States*, 109 S. Ct. 1443, 1447 (1989).

mail. JM Aff, Exh 5 at 22. Moreover, numerous letters were sent by DeLorean and others in order to put into motion the complex series of back-to-back bank transactions used to divert the monies. JM Aff, Exh 46. In addition, Kimmerly testified that he received a letter from DeLorean through the mails as an apparent cover-up attempt of the DRLP Scheme. JM Aff, Exh 25 at 401.

Second, the evidence demonstrates that the members of the enterprise used the wires in furtherance of the DRLP Scheme in violation of 18 U.S.C. §1343.[14] DeLorean and Schade both testified that the diverted funds were wired through a series of complex back to back bank transactions from the United Kingdom through Switzerland and the Netherlands to an account in the United States in furtherance of the DRLP Scheme. JM Aff, Exh 5 at 50; Exh 3 at 134-135; Exh 47.

Third, the evidence demonstrates that money and property were obtained by members of the enterprise through False Pretenses. A private placement memorandum was presented to DRLP and its partners for the supposed purpose of soliciting and raising $17.8 million for the research and development of the DeLorean sports car, however, the members of the enterprise intended to secretly divert a significant portion of those funds for their own benefit. JM Aff, Exh 2; Exh 4 at 182-184; Exh 3 at 134-136, 147-152, 155-156; Exh 5 at 28-30, 34-35, 46, 56.

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14. It is also well established that a violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *United States* v. *Hathaway*, 798 F.2d 902, 908, n.3 (6th Cir. 1986); *United States* v. *Tarnopol*, 561 F.2d 466, 471-473 (3rd Cir. 1977).

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in violation of 18 U.S.C. §1956 in an effort to hide the trail of the funds. JM Aff, Exh 3 at 134-146, 150-152, 155-156; Exh 5 at 28-30, 34-35, 46, 50, 56; Exh 2.

The DMCL Scheme

As part of the plan to illegally and fraudulently divert at least $12.6 million in connection with the DMCL Scheme (Statement of Facts at 5-6), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DMCL Scheme in violation of 18 U.S.C. §1341. Draft contracts of the agreements among DMCL, DRLP, and GPD were sent back and forth by and among DeLorean, Bushels, GPD, and Chapman through the mails. JM Aff, Exh 2 at 16-18; Exh 5 at 22. Also, DeLorean sent various letters from the United States to the other members of the enterprise in connection therewith. JM Aff, Exh 2 at 19.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the DMCL Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls were made in furtherance of the DMCL Scheme since DeLorean resided in the United States and Chapman, Bushell, and GPD resided overseas. Reference is made to some of the numerous telephone calls between DeLorean, Bushell, and others in JM Aff, Exh 2 at 36. *See also*, JM Aff, Exh 44 at 350-351; Exh 30 at 867-868.

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Third, the evidence demonstrates that the members of the enterprise obtained monies and property through False Pretenses in furtherance of the DMCL Scheme. The members of the enterprise represented to DMCL that although DRLP had entered into a $17.8 million contract with GPD for the research and development of the DeLorean sports car, the GPD contract would only satisfy a portion of the financial requirements for manufacturing the prototype. Although the actual contract with GPD and Lotus was for only $10.5 million, the members of the enterprise misrepresented that, in addition to the supposed GPD contract price of $17.8 million, DMCL also would be required to separately satisfy additional (phony) invoices for work supposedly performed by Lotus in the approximate amount of $12.6 million, which the members of the enterprise fraudulently diverted for their own use. JM Aff, Exh 2; Exh 4 at 182-184; Exh 3 at 51-52, 103, 111-115.

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in furtherance of the DMCL Scheme. The members of the enterprise again utilized complex financial maneuvers through bank and corporate transfers in order to launder the diverted funds derived from the DMCL Scheme. JM Aff, Exh 2.

The Eureka Scheme

As part of the plan to illegally and fraudulently obtain $10 million in connection with the Eureka Scheme (Statement of Facts at 7), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, Money Laundering and Unlawful Monetary Transactions.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the

Eureka Scheme in violation of 18 U.S.C. §1341. JM Aff, Exh 8; Exh 10 at 280-281; Exh 48.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls were made to and from DeLorean in furtherance of the Eureka Scheme. JM Aff, Exh 8; Exh 10 at 280-281.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain monies under False Pretenses in furtherance of the Eureka Scheme. Members of the enterprise attempted to defraud supposed members of the Mafia out of $10 million under the False Pretenses that the Mafia members would receive ownership in the DeLorean car company when in fact they would receive shares in a shell corporation with no assets. JM Aff, Exh 8; Exh 4 at 170-177; Exh 10 at 280-281.

Fourth, the evidence demonstrates that members of the enterprise were knowingly attempting to launder monetary instruments in furtherance of the Eureka Scheme and engaging in monetary transactions in property derived from unlawful activity. JM Aff, Exh 8; Exh 5 at 195, 199, 202; Exh 10 at 279-280.

The Creditors Scheme

As part of the plan to illegally and fraudulently obtain the assets of Logan from the bankruptcy trustee in furtherance of the Creditors Scheme (Statement of Facts at 9), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, and False Pretenses.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Creditors Scheme in violation of 18 U.S.C. §1341. Pleadings, Motions, and correspondence were filed with the Court and served by mail upon opposing counsel and interested parties. JM Aff, Exh 4 at 191-192; Exh 30 at 777, 778, 783, 785; Exh 21.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Creditors Scheme in violation of 18 U.S.C. §1343. DeLorean and Nesseth were in constant contact over the telephone strategizing. JM Aff, Exh 9 at 101-102.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain the assets of Logan from the bankruptcy trustee under the False Pretenses that the sale of Logan's assets was being made to an independent company known as Pacific when in fact the sale was being made to and through Logan's affiliates, Nesseth and DeLorean, in furtherance of the affairs of the enterprise. JM Aff, Exh 4 at 190-192; Exh 19 at 133-134.

The Gorman Scheme

As part of the plan to illegally and fraudulently obtain DMC from the bankruptcy trustee in furtherance of the Gorman Scheme (Statement of Facts at 8-9), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Unlawful Monetary Transactions.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the

Gorman Scheme in violation of 18 U.S.C. §1341. Correspondence and court pleadings were sent through the mails to opposing counsel and interested parties in furtherance of the scheme. JM Aff, Exh 20 at 2-3.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Gorman Scheme in violation of 18 U.S.C. §1343. Gorman and DeLorean made several telephone calls in furtherance of the Gorman Scheme. JM Aff, Exh 20 at 6, 9-10; Exh 18 at 391-392.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain the assets of DMC from the bankruptcy trustee under the False Pretenses of using a supposedly independent group of investors as a front for Logan, DeLorean, and Nesseth. JM Aff, Exh 20.

Fourth, the evidence demonstrates that the members of the enterprise engaged in Unlawful Monetary Transactions. Although in 1983, Logan's assets were subject to restraining orders issued by the Bankruptcy Court, Logan secretly paid the $100,000 earnest money deposit in furtherance of the Gorman Scheme. JM Aff, Exh 4 at 188-190; Exh 20. Moreover, the assets of Logan were substantially derived from the proceeds of the DRLP Scheme. JM Aff, Exh 3 at 134-146; Exh 7.

The Weitzman Scheme

Although Defendants argue that no evidence supports the occurrence of the Weitzman Scheme, more than sufficient evidence establishes a genuine issue of material fact as to whether members of the enterprise perpetrated a scheme to defraud Weitzman (Statement of Facts at 10-12).

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As part of the plan to perpetrate the Weitzman Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. §1341. DeLorean sent letters through the mails to Weitzman in an effort to rewrite history regarding the fee agreements between Weitzman and DeLorean and Logan. JM Aff, Exh 9 at 18-19, 25-28, 63-64.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. §1343. DeLorean called Weitzman attempting to rewrite history in furtherance of the fraudulent scheme. JM Aff, Exh 9 at 23; Exh 49. Nesseth repeatedly called DeLorean to devise strategies. JM Aff, Exh 9 at 101-102. DeLorean and others placed a threatening call to the prospective purchasers of the Pauma Valley Property in an effort to cause the sale to be aborted since, if it had not been, Weitzman would have received the proceeds. *Id.* at 86-89.

The Kimmerly Scheme

Although Defendants also argue that no evidence supports the occurrence of the Kimmerly Scheme, more than sufficient evidence establishes a genuine issue of material fact as to whether members of the enterprise perpetrated a scheme to defraud Kimmerly (Statement of Facts at 12-13).

As part of the plan to perpetrate the Kimmerly Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Kimmerly Scheme in violation of 18 U.S.C. §1341. Kimmerly testified that he received partial payments from Logan through the mail. JM Aff, Exh 25 at 270. Kimmerly also received numerous letters from DeLorean through the mail during the course of providing legal services, a few of which were mentioned by Kimmerly in his deposition. JM Aff, Exh 25 at 400-401, 448.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Kimmerly Scheme in violation of 18 U.S.C. §1343. DeLorean constantly placed telephone calls to Kimmerly during the course of providing legal services. JM Aff, Exh 4 at 251; Exh 25 at 267-268, 356-357.

The Simon Scheme

Defendants also contend that no evidence supports the occurrence of the Simon Scheme. However, more than sufficient evidence establishes a genuine issue of material face as to whether the members of the enterprise perpetrated a scheme to defraud Simon (Statement of Facts at 14-15).

As part of the plan to perpetrate the Simon Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Simon Scheme in violation of 18 U.S.C. §1341. DeLorean sent a letter through the mails to the presiding judge and others

in an effort to prevent Simon from withdrawing notwithstanding the failure to pay levy fees. JM Aff, Exh 5 at 155, 169; Exh 28. Furthermore, correspondence and pleadings were sent through the mails to and from DeLorean, Simon, and others. JM Aff, Exh 50.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Simon Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls took place between Simon, DeLorean, and others during the time period that Simon provided legal services. JM Aff, Exh 50.

The McConnell Scheme

Although Defendants contend that no evidence exists to support the occurrence of the McConnell Scheme, more than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud McConnell (Statement of Facts at 13-14.

As part of the plan to perpetrate the McConnell Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the McConnell Scheme in violation of 18 U.S.C. §1341. The refusal to satisfy outstanding legal fees caused McConnell and his firm to send reminder requests for payment through the mails. DeLorean then sent a scathing reply letter threatening malpractice action through the mails as well. JM Aff, Exh 26 at 6-7, 9, 11.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the McConnell Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls took place between McConnell and DeLorean and others during the period that McConnell provided legal services. JM Aff, Exh 51.

The Weinberg Scheme

Defendants also argue that no evidence supports the allegations pertaining to the Weinberg Scheme. But more than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud Weinberg, Greenberg and GMDH&P (Statement of Facts at 15-16).

As part of the plan to perpetrate the Weinberg Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. §1341. During the course of providing legal services, Weinberg, Greenberg and GMDH&P sent and received numerous letters through the mails. JM Aff, Exh 32 at 319-320, 411-413; Exh 52. When Logan and DeLorean failed to timely satisfy outstanding fees, Weinberg and Greenberg also sent letters to DeLorean and Logan through the mails. JM Aff, Exh 32 at 411-413.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. §1343. During the

course of providing legal services, Weinberg and Greenberg often spoke with DeLorean and others over the telephone. JM Aff, Exh 53 at 80-81, 174; Exh 23 at 407; Exh 52. Weinberg and Greenberg repeatedly discussed with DeLorean over the telephone the fee arrangements and the failure to timely satisfy outstanding legal fees and expenses. JM Aff, Exh 32 at 377-379, 384, 386, 388, 396-399, 400, 411, 414. During the course of providing representation, Weinberg received and sent numerous telefaxes, some of which he testified to during his deposition. JM Aff, Exh 52; Exh 54; Exh 55.

The Morganroth Scheme

Defendants disingenuously contend that no evidence supports the allegations pertaining to the Morganroth Scheme. More than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud Morganroth and his firm out of in excess of $5.4 million (Statement of Facts at 16-19).

As part of the plan to perpetrate the Morganroth Scheme, the menders of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. §1341. DeLorean, Logan, and the other members of the enterprise constantly used the mails in furtherance of the scheme to defraud Morganroth over the ten year period. Ten such mailings are delineated on pages 26 and 27 of the Complaint, which is verified by Morganroth. *See also*, JM Aff, Exh 25 at 360; Exh 29 at 321-322; Exh 56.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. §1343. DeLorean, Logan, and the other members of the enterprise constantly telefaxed and telephoned Morganroth in furtherance of the scheme to defraud Morganroth over the ten year period. Thirty-three such instances are delineated on pages 27-32 of the Complaint, which is verified by Morganroth. *See also*, JM Aff, Exh 29 at 371, 443-445; Exh 30 at 831-832; Exh 40 at 617; Exh 24 at 337; Exh 33 at 82-83, 89-94, 100-108, 118; Exh 55.

IV. SUBSTANTIAL EVIDENCE ESTABLISHES VIOLATIONS OF 18 U.S.C. §1962(a), (b), (c) AND (d).

Once again, Defendants impermissibly attempt to reargue that Plaintiffs' Complaint fails to sufficiently plead violations of 18 U.S.C. §1962(a), (b), (c) and (d) even though this Honorable Court already has rejected said contention. *See*, JM Aff, Exh 1.

Defendants' argument that no evidence supports Plaintiffs' well-pled allegations of violations of 18 U.S.C. §1962(a), (b), (c) and (d) also is misplaced, as set forth below, since more than sufficient evidence exists to establish a genuine issue of material fact as to whether Defendants violated the substantive RICO sections.

A. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(a).*

A violation of 18 U.S.C. §1962(a) occurs when a person receives income, directly or indirectly, from a pattern of

racketeering activity and uses or invests, directly or indirectly, such income or the proceeds of such income in acquisition of any interest in, or the establishment or operation of any enterprise. 18 U.S.C. §1962(a). In the case at bar, more than sufficient evidence exists to establish a genuine issue of material fact as to whether Defendants violated §1962(a).

First, the evidence demonstrates that DeLorean and Logan received income, directly or indirectly, from the pattern or racketeering. DeLorean and Logan received approximately $9.4 million from the DRLP Scheme (JM Aff, Exh 5 at 34-35, 56-57, 97, 102-103; Exh 3 at 135-156; Exh 2), additional significant amounts from the DMCL Scheme (JM Aff, Exh 3 at 114-115; Exh 4 at 182-184; Exh 2), and, at a minimum, $10.2 million from the Attorney Schemes (Statement of Facts at 10-19). Furthermore, DeLorean and Logan attempted to obtain income from the Eureka Scheme (JM Aff, Exh 8; Exh 4 at 174-176; Exh 10 at 280-281), from the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 133-134), from the Gorman Scheme (JM Aff, Exh 4 at 190; Exh 20 Exh 19 at 41-47), and from the Simon Scheme (JM Aff, Exh 5 at 155, 169-170; Exh 28; Exh 4 at 157-158, 167; Exh 3 at 57, 59-60, 68-69, 71-72, 81, 85, 96-97; Exh 29 at 268-271, 466-471, 474-478).

Second, the evidence demonstrates that DeLorean and Logan used or invested, directly or indirectly, such income or proceeds of such income in the acquisition of any interest in, or the establishment or operation of any enterprise. A significant portion of the income derived from the DRLP and DMCL Schemes was used to pay the establishment of the enterprise and its operating expenses in carrying out said schemes. JM Aff, Exh 2 at 25-30; Exh 3 at 134-156. Moreover, a significant portion of the income derived from the DRLP Scheme was

used to satisfy the acquisition loan borrowed to purchase the assets of Logan (Statement of Facts at 4-5). A liquid Logan then reinvested $100,000 of such income into the enterprise to be used as the earnest money deposit in furtherance of the Gorman Scheme. JM Aff, Exh 20. In addition, Logan used such wrongfully derived income to make partial payments on behalf of the members of the enterprise to attorneys in order to string them along. JM Aff, Exh 29 at 264-265; Exh 4 at 27-28; Exh 25 at 270-271; Exh 53 at 200-204; Exh. 57. Logan also used the wrongfully derived income to pay Nesseth for services he rendered on behalf of the enterprise. JM Aff, Exh 40 at 669-670, 674, 678-679; Exh 19 at 63-64, 69-70, 73-75, 79, 92. Furthermore, the income which was to be derived from the Eureka Scheme was intended to be used to purchase DMC out of bankruptcy so as to enable the members of the enterprise to resume other schemes to defraud and to prevent the discovery of the schemes already implemented. (Statement of Facts at 7). Finally, some of the income that DeLorean and Logan received from the Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth Schemes was used to pay the expenses incurred by the enterprise in hiring Freidberg to provide assistance in perpetrating the Weinberg and Morganroth Schemes (JM Aff, Exh 23 at 258-260; Exh 19 at 48-49; Exh 33 at 52-68; Exh 34; Exh 30 at 835-836, 839-840; Exh 32 at 378-379, 384); and also to pay settlement costs on behalf of DeLorean and Logan to DSQ with respect to the lawsuit seeking damages arising out of the DMCL Scheme.

B. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(b).*

A violation of 18 U.S.C. §1962 (b) occurs when a person acquires or maintains an interest in or control or an enterprise

through a pattern of racketeering activity. 18 U.S.C. §1962(b). Plaintiffs allege that Defendants and others formed the enterprise for the illegitimate common purpose of profiting from crime. The evidence demonstrates that DeLorean and Logan acquired an interest or control of the association in fact by exploiting their relationships and using their skills to provide assistance in perpetrating and devising the racketeering activity. *See*, Statement of Facts. DeLorean and Logan acquired their interest or control by agreeing to perform and performing racketeering acts to the benefit of the members of the enterprise. *See*, Section II at 37-40. Thereafter, DeLorean and Logan maintained said interest or control as "President" and "Treasurer" by performing the racketeering acts that they were brought in to perpetrate on the basis of their unique position to do so. *Id.* In fact, the pattern of racketeering activity enabled DeLorean to maintain control over Cristina Corporation, Cristina Holdings Corporation, and Logan, and enabled Logan to maintain control over itself by satisfying its lenders and fending off attempts to pirate its assets. *Id.*

C. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(c).*

A violation of 18 U.S.C. §1962(c) occurs when a person associated with or employed by an enterprise conducts or participates, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering or collection of unlawful debt. 18 U.S.C. §1962(c). *See also*, *Sedima*, 473 U.S. at 496. A recent Supreme Court case interprets the words "conduct" and "participate" as playing some part in directing the enterprise's affairs. *Reves* v. *Ernst & Young*, 113 S. Ct. 1163, 1170 (1993).

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In the case at bar, the evidence demonstrates that DeLorean and Logan were associated with or employed by an enterprise and participated in the conduct of the enterprise's affairs through a pattern of racketeering activity. *See*, Section II at 37-40. First, DeLorean devised the DRLP and DMCL Schemes along with Chapman, Bushell, and GPD, and he participated in causing DRLP and DMCL to be ensnared in the trap set by the members of the enterprise. *Id.* Logan, as "treasurer," played a direct role in hiding the trail of funds diverted in connection with said schemes and making subsequent disbursements. *Id.* Second, DeLorean devised the Eureka Scheme, actually met with the intended victims, and attempted to ensnare them in the trap to defraud them. *Id.* Logan, in its capacity as "treasurer," offered itself as a vehicle for money laundering in an attempt to further entice the intended victims to fall prey to the scheme to defraud. *Id.* Third, DeLorean and Logan devised and directed the Gorman Scheme. *Id.* Logan secretly put up the $100,000 earnest money deposit which was a necessary element of said scheme. *Id.* Fourth, DeLorean and Logan devised and directed the Creditors Scheme. *Id.* Fifth, DeLorean and Logan devised and implemented each scheme to defraud attorneys. *Id.* By way of further example, Logan sent audited financial statements to Morganroth which confirmed and acknowledged the outstanding balance, DeLorean and Logan made repeated misrepresentations to Morganroth regarding satisfaction of legal fees and expenses, DeLorean and Logan sent monies to Freidberg in order to fund the sham malpractice action against Morganroth, and DeLorean and Logan made partial payments to Morganroth in order to string him along. Statement of Facts at 15-19.

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D. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(d).*

A violation of 18 U.S.C. §1962(d) occurs when a person conspires to violate any of the provisions of §1962(a), (b) and/or (c). A plaintiff need only prove that a defendant entered into an agreement with knowledge that the goal of the conspiracy was the commission of the RICO violation. *United States* v. *Campione*, 942 F.2d 429, 437 (7th Cir. 1991). It is well established that a plaintiff need not prove that a RICO conspirator had full knowledge of all the details of the conspiracy; knowledge of the essential nature of the plan is sufficient. *Elliott*, 571 F.2d at 903-904. Furthermore, the Defendants' "agreement to participate in the RICO conspiracy may be inferred from their acts." *Hughes*, 895 F.2d at 1141, *citing*, *Joseph*, 835 F.2d at 1152 (inference drawn from defendant's acts is sufficient evidence to participate in the affairs of the enterprise). Since secrecy and concealment are essential features of a successful conspiracy, it is well established that direct evidence of agreement is unnecessary.

> Proof of such an agreement may rest upon inferences drawn from relevant and competent circumstantial evidence — ordinarily the acts and conduct of the alleged conspirators themselves. Additionally, once the conspiracy has been established, the [plaintiff] need show only slight evidence that a particular person was a member of the conspiracy. Of course, a party to a conspiracy need not know the identity, or even the number of his confederates.

Elliott, 571 F.2d at 903 (citations omitted).

In the case at bar, more than sufficient evidence exists to establish a genuine issue of material fact as to a violation of §1962(d). The evidence demonstrates that DeLorean and Logan entered into a conspiratorial agreement to violate the RICO substantive sections, and that they in fact carried out the agreement by violating §1962(a), (b), and (c). *See*, Section 11 at 37-40; Statement of Facts.

V. SUBSTANTIAL EVIDENCE ESTABLISHES INJURY TO BUSINESS OR PROPERTY BY REASON OF VIOLATIONS OF 18 U.S.C. §1962.

It is well established that §1964(c) authorizes a private suit by "any person injured in his business or property by reason of §1962." *See*, 18 U.S.C. §1964(c); *Sedima*, 473 U.S. at 495. In construing said section of the RICO statute, the United States Supreme Court specifically rejected the concept that "racketeering injury" separate from the injury caused by the predicate acts is necessary to maintain a RICO Private suit. *Id.*[15] All but a few circuits have followed the mandates of *Sedima* in construing the sufficiency of §1962(a), (b) and (c) claims. *See*, *Brandenburg* v. *Seidel*, 859 F.2d 1179, 1187 (4th Cir. 1988);

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15. The Supreme Court in *Sedima*, 473 U.S. at 497 held:

> Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by the predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of the enterprise. Those acts are, when committed in the circumstances delineated in §1962(c), an activity which RICO was designed to deter. Any recoverable damages occurring by reason of a violation of §1962(c) will flow from the commission of the predicate acts.

Nodine v. *Textron, Inc.*, 819 F.2d 347, 348 (1st Cir. 1987); *Corwin* v. *Marney, Orton Invest.*, 788 F.2d 1063, 1069 (5th Cir. 1986); *Haroco Inc.* v. *American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *Aff'd*, 473 U.S. 606 (1985). The Sixth Circuit, as well as some other courts, has made clear that no "racketeering injury" separate from the harm caused by the predicate acts is necessary to maintain a §1962(c) claim, but that unlike §1962(c), a plaintiff must demonstrate injury stemming directly from the defendant's alleged use or investment of illegally obtained income in connection with a §1962(a) claim. *Craighead* v. *E.F. Hutton & Co.*, 899 F.2d 485, 494 (6th Cir. 1990).

Defendants, nevertheless, incorrectly contend that a separate "racketeering injury" is required with respect to all of the substantive RICO sections. But whether one applies *Sedima* to all of the RICO claims here, or adopts the Sixth Circuit's view with respect to §1962(a) claims, the record readily reveals more than sufficient evidence of, at minimum, a genuine issue of material fact as to whether Plaintiffs suffered injury to business or property by "reason" of a violation of §1962.

It is abundantly clear that the evidence in the case at bar more than sufficiently satisfies the dictates of *Sedima*. Plaintiffs have suffered the loss of in excess of $5.4 million and their law practice also has lost clients, resources, and additional income by reason of Defendants' §1962 violations. Statement of Facts at 16-19. In fact, the evidence even satisfies the erroneous standard suggested by Defendants since the injury to Plaintiffs' business and property was caused by DeLorean's and Logan's acquisition or maintenance of an interest in the enterprise, and operation and management of the enterprise. *See*, Statement of Facts; Section II at 37-40.

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It is also abundantly clear that the evidence more than sufficiently satisfies the dictates of *Craighead* with respect to the §1962(a) claim since Defendants used and invested Income derived from racketeering activity to establish and operate the scam on Morganroth. *Newmyer*, 888 F.2d at 397. The evidence demonstrates that the Plaintiffs have suffered injuries to business and property stemming directly from DeLorean's and Logan's use or investment of their illegally obtained income. *See*, Section IV(A) at 58-60. DeLorean and Logan used income derived from the Weitzman, Kimmerly, and McConnell Schemes, to make partial payments to Morganroth in an effort to string Morganroth along. *Id.* In reliance on the partial payments, Morganroth continued to provide legal services to DeLorean and Logan. *Id.* In addition, DeLorean and Logan also used such wrongfully derived income to secretly retain Freidberg in 1990 to institute a sham malpractice action against Morganroth in order to avoid payment. *Id.* Freidberg was retained in 1990 with wrongfully derived income that should have been paid to Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth. *Id.* The sham malpractice action was not filed until Morganroth had resolved certain of DeLorean's and Logan's legal troubles approximately 2 1/2 years later, so that DeLorean and Logan could receive the additional benefits of Morganroth's services without payment. *Id.* Finally, some of the partial payments to Morganroth in furtherance of the Morganroth Scheme and the substantial monies paid to Freidberg to perfect the Morganroth Scheme were financed through the DRLP Scheme. Monies became available to Logan after Logan's acquisition loan was satisfied through the income wrongfully derived from the DRLP Scheme. *Id.* In addition, Logan funneled monies to DeLorean through the Cristina Note, which was executed as part of the DRLP Scheme. *Id.*

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CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Honorable Court deny the Defendants' Motions, and award costs and attorney fees so wrongfully incurred by Plaintiffs.

Respectfully submitted,

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Dated: February 14, 1994

APPENDIX M — PLAINTIFF'S BRIEF IN OPPOSITION DATED FEBRUARY 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SEPARATE TRIALS

STATEMENT OF ISSUES

WHETHER, UNDER THE STANDARDS SET OUT IN FED. R. CIV. P.42(B), DEFENDANTS' MOTION FOR SEPARATE TRIALS OF PLAINTIFFS' RICO CLAIMS AND RELATED FRAUD AND OTHER COMMON LAW CLAIMS SHOULD BE DENIED WHEN *ALL* OF PLAINTIFFS' CLAIMS — RICO AND NON-RICO — INVOLVE THE SAME KEY WITNESSES AND MUCH OF THE SAME TESTIMONY AND DOCUMENTARY EVIDENCE.

PRELIMINARY STATEMENT

In the guise of promoting the "efficient administration of justice," defendants attempt to convince the Court that it should conduct not one, but *two* trials of this action pursuant to Rule 42(b) of the Federal Rules of Civil Procedure. Defendants would first have the Court conduct a trial of plaintiffs' fraud and other common law claims, which seek to recover millions of dollars in unpaid attorneys' fees and expenses based on, among other things, defendants' repeated misrepresentations that they intended to and would pay plaintiff Morganroth's outstanding

fees. Then, if plaintiffs are awarded any damages on their fee and common law fraud claims, defendants would have the Court conduct a second trial of plaintiffs' RICO claims — involving the same key witnesses and much of the same testimony and documentary evidence as the first trial.

As we show below, where claims sought to be bifurcated under Rule 42 involve overlapping proof, the courts have repeatedly held that separate trials are inappropriate. In this case, moreover, the overlap is not only clear but substantial: much of the documentary evidence and testimony proving that defendants engaged in mail and wire fraud — predicate acts of racketeering — is the *same evidence* that will be used to support plaintiffs' common law claims. Letters, faxes and phone calls from defendants containing false representations regarding payment of attorneys' fees — used to induce Morganroth to perform additional legal work for DeLorean and Logan — will be used as evidence of predicate acts of mail and wire fraud, as proof of misrepresentations of material fact necessary to support plaintiffs' common law fraud claim, and as proof of DeLorean's breach of contract. And the same individuals — DeLorean, Logan's officers, and Morganroth among them — will be key witnesses on both the RICO claims and the related common law claims.

In these circumstances, the notion that this case should be tried twice, just because the RICO claims involve additional evidence beyond the substantial common core evidence supporting the RICO and non-RICO claims, would undermine rather than serve the fundamental goals Rule 42 was designed to promote — efficient trials that further the convenience not merely of the parties but of the Court and jurors. The further notion defendants press — that they will somehow be

"prejudiced" by one trial — is equally hard to fathom, given that DeLorean and Logan will have to defend themselves against serious common law fraud and punitive damage claims in any event. Indeed, every RICO action filed in federal court invariably includes related common law claims. Yet, as we show below, it is the overwhelming rule — with virtually no exception — that the RICO claims and common law claims are tried in a single proceeding before one jury. Nothing about this case justifies a departure from that salutary practice.

STATEMENT OF FACTS

The relevant facts are set forth in Plaintiffs' Combined Brief in Opposition to Defendants' Motion for Partial Summary Judgment Against Count I and Motions For Judgment on the Pleadings Against Counts I and II ("Plaintiffs' Combined Brief") submitted concurrently with this brief. We respectfully incorporate those facts by reference. All citations to the record are appended to the Affirmation of Jeffrey B. Morganroth ("JM Aff"), submitted in conjunction with both of plaintiffs' opposition briefs.

ARGUMENT

I. ALL OF PLAINTIFFS' CLAIMS SHOULD BE TRIED IN A SINGLE PROCEEDING

A. *Conducting separate trials pursuant to Rule 42(b) is the exception, not the rule, and is inappropriate where the claims asked to be separated involve overlapping proof.*

Rule 42(b) allows a court to order separate trials of claims or issues when such an order would be "in furtherance of

convenience, or to avoid prejudice, or . . . will be conducive to expedition and economy." Fed. R. Civ. P. 42(b). The general principles governing application of this standard are well settled. First, in deciding a Rule 42(b) motion "[i]t is the interest of efficient judicial administration that is to be controlling, rather than the wishes of the parties." 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 2388, at 279 (1971). Second, although a motion under Rule 42(b) is addressed to the sound discretion of the district court, "[n]otwithstanding this discretion, a court should *not routinely* order separate trials." *THK Am., Inc. v. Nippon Seiko KK & NSK Corp.*, 141 F.R.D. 463, 464 (N.D. Ill. 1991) (emphasis in original). Rather, the starting point for any Rule 42(b) analysis is that "[a]ll issues in a case should normally be tried in the same proceeding." *Ingram Corp. v. J. Ray McDermott & Co.*, 495 F. Supp. 1321, 1334 (E.D. La. 1980). The party seeking bifurcation accordingly has the burden of proving that separate trials are warranted "in light of the general principle that a single trial tends to lessen the delay, expense and inconvenience to all parties." *Lowe v. Philadelphia Newspapers, Inc.*, 594 F. Supp. 123, 125 (E.D. Pa. 1984). *Accord Sunenblick v. Harrell*, 145 F.R.D. 314, 317 (S.D.N.Y. 1993) (separation of issues under Rule 42(b) "is not the usual course that should be followed") (quoting *Keyes Fibre Co. v. Packaging Corp. of Am.*, 763 F. Supp. 374, 375 (N.D. Ill. 1991); *Frasier v. Twentieth Century-Fox Film Corp.*, 119 F. Supp. 495, 497 (D. Neb. 1954) ("[T]he trial piecemeal of separate issues in a single suit is not the usual course."); 9 Wright and Miller, *supra*, § 2388, at 279 (separate trial of issues in a single suit "is not to be the usual course"); Fed. R. Civ. P. 42(b), Advisory Committee Note ("separation of issues for trial is not to be routinely ordered").

Finally, in deciding Rule 42(b) motions, courts often view as key whether the claims sought to be bifurcated involve "the

same witnesses" and "overlapping" documentary proof. *Organic Chems. Inc. v. Carroll Prods., Inc.*, 86 F.R.D. 468, 470–71 (W.D. Mich. 1980). A party seeking bifurcation must therefore show that "the issue to be tried [is] so distinct and separable from the others that a trial of it alone may be had without injustice." *Response of Carolina, Inc. v. Leasco Response, Inc.*, 537 F.2d 1307, 1324 (5th Cir. 1976) (citation omitted).

As we show in the next section, defendants do not come close to meeting this burden. To the contrary, because plaintiffs' RICO claims and related common law claims all share a core set of facts and involve much of the same proof, conducting two trials instead of one would not further the goals of Rule 42(b).

B. *A separate trial of plaintiffs' RICO claims will result in substantial duplication of effort by both the parties and the Court.*

A core component of plaintiffs' RICO claims are the schemes by which DeLorean and Logan, in concert with others, defrauded plaintiffs and numerous other attorneys and their firms of millions of dollars in legal fees over approximately a ten year period. The complaint charges that defendants fraudulently induced plaintiffs and other attorneys to provide extensive legal services without pay and to forebear from exercising their right to recover the fees they were legitimately owed by repeatedly making false representations that defendants would eventually pay the outstanding legal fees and expenses. Complt. ¶ 43. In furtherance of this scheme, defendants engaged in numerous RICO predicate acts of mail and wire fraud. *See*, Plaintiffs' Combined Brief at 1-19 and 46-58. As we demonstrate in Plaintiffs' Combined Brief, these allegations alone involve a

sufficient number of related and continuous predicate acts of mail and wire fraud to satisfy the RICO "pattern" requirement.[1]

Much of the proof relating to these RICO claims overlaps in substantial part with the proof required for many of the other counts in plaintiffs' complaint. For example, to prove common law fraud, Morganroth will show (1) that defendants made false representations of material fact — the repeated promises that fees due and owing would be paid; (2) that the representations deceived plaintiffs; (3) that plaintiffs relied on the representations by continuing to do legal work for defendants (indeed, for two years after DeLorean and Logan had *secretly* retained the Freidberg firm to sue Morganroth for malpractice); and (4) that plaintiffs suffered damage — performing millions of dollars of legal work that DeLorean and Logan never had any intention of paying for. *See generally, Warkentien v. Vondracek*, 633 F.2d 1, 5 (6th Cir. 1980) (defining elements of common law fraud under Michigan law). The *same* false promises to pay Morganroth (as well as others), made by mail and wire, are

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1. *See, H J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 242 (1989) ("[a] party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time."). Schemes of substantially shorter duration than the 10-year conspiracy alleged in this complaint have been found to satisfy the continuity prong of the RICO "pattern" requirement. *See, e.g., Bank One of Cleveland, N.A. v. Abbe*, 916 F.2d 1067, 1079-80 (6th Cir. 1990) (plaintiffs adequately alleged a pattern where the defendants operated two bank fraud conspiracies, for more than six years, as part of a scheme to defraud several banks); *Swistock v. Jones*, 884 F.2d 755, 759 (3d Cir. 1989) (predicate acts of mail and wire fraud by defendants over a fourteen month period for the purpose of inducing plaintiffs to enter into lease is sufficient to establish continuity and hence pattern).

the predicate acts supporting the core elements of the RICO claims. Hence, the *same* documentary evidence — letters and faxes containing representations regarding attorneys' fees — and the *same* key witnesses to conversations and communications about such fees and the performance of such legal services — Mayer Morganroth, the officers of defendant Logan (Mel Mitchell, Michael Beeley and Al Rapetti), Tom Kimmerly, DMC's former general counsel, Howard Weitzman, Malcolm Schade, and DeLorean himself — will provide evidence that is equally and directly relevant to the RICO claims and the common law fraud claims.[2]

These same letters and telephone calls will also be used to support Morganroth's breach of contract and account stated claims. To prove breach of contract, plaintiffs will show that the parties entered into various agreements regarding legal services, that plaintiffs performed legal services pursuant to these agreements and that defendants failed to pay for these services. To prove an account stated, plaintiffs will show "an agreement, express or implied, that an examination of the account between

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2. It is also clear that these same key witnesses will be called to testify about many of the other schemes supporting plaintiffs' RICO claim. DeLorean obviously will be a key witness on all of the schemes. Kimmerly and the present and former Logan officers, Beeley, Mitchell and Rapettl, also have personal knowledge of many of the other fraudulent schemes. *See, e.g.*, JM Aff, Exh 4 at 170-78 (Eureka Scheme), 182-85 (DMCL Scheme), 188-90 (Gorman Scheme). Moreover, as Plaintiffs' Combined Brief sets out in Point I, evidence about these schemes is relevant not only to the RICO claims but also to Morganroth's rebuttal of DeLorean' and Logan's malpractice allegations, which defendants are pressing by way of defense and setoff. As a result, evidence of these schemes also overlaps very substantially with the evidence that will be introduced by both sides on the fee claim and malpractice defense.

the parties has occurred, a statement of that account has been asserted, and accepted as correct." *Polygram, S.A. v. 32-03 Enters. Inc.*, 697 F. Supp. 132, 136 (E.D.N.Y. 1988).

As part of the proof regarding these common law claims, plaintiffs will show — through documentary evidence and testimony — that defendants sent, or caused to be sent, numerous letters and faxes to plaintiffs and others, and had numerous phone conversations with plaintiffs regarding defendants' promises to pay fees and expenses. Plaintiffs will also show that they periodically sent defendants statements indicating the amounts owed; that defendants acknowledged that those statements were correct; and that defendants failed to pay, even though plaintiffs did in fact provide defendants with extensive legal services. But this same proof is also part and parcel of the evidence that will be used to establish that defendants engaged in predicate acts of racketeering — mail and wire fraud — under RICO.[3]

3. When plaintiffs introduce into evidence phone calls from DeLorean and Logan to plaintiffs promising to pay plaintiffs' legal fees, that evidence simultaneously supports many of plaintiffs' claims, not just the RICO claim. As an example, consider the December 21, 1992 letter from Morganroth to DeLorean confirming a phone conversation in which DeLorean represented that plaintiffs would be paid. *See, e.g.*, JM Aff, Exh 38. If the jury finds that the representation by DeLorean was false when made and was intended to deceive plaintiffs — a not unlikely prospect given that DeLorean had by then secretly retained Edward Freidberg to bring a malpractice action against Morganroth, his firm, and the Graubard firm — the jury may conclude that DeLorean committed wire fraud, a predicate act of racketeering, as well as common law fraud. If, on the other hand, the jury concludes that DeLorean was merely reaffirming past due fees or making promises to pay future fees, but acted without fraudulent intent, that same evidence will nonetheless support plaintiffs' breach of contract and account stated claims.

Clearly, plaintiffs' claims involve a substantial amount of overlapping proof. In these circumstances, holding two trials instead of one will serve only to waste the valuable time of the Court, jurors, and the parties. *See, e.g.*, *Keyes Fibre Co.*, 763 F. Supp. at 375-76 (denying Rule 42(b) motion in patent infringement action because "[t]he evidence relating to [defendant's] state of mind when it committed the infringement, which is clearly relevant to damages, cannot be neatly separated from the underlying liability issue of whether the patent was infringed upon in the first place"; hence "[a] single trial would relieve the parties of having to bring the same witnesses back into court a second time to elicit the same testimony") (footnote omitted); *Organic Chems., Inc.* 86 F.R.D. at 470 (in case involving patent issues and breach of contract claims, court denied Rule 42(b) motion requesting bifurcation of liability from damages because "evidence concerning customers and sales matters, clearly important to damages, would also be important in proving liability"); *Ingram Corp.*, 495 F. Supp. at 1324 (in an antitrust action by contractors against competitors who allegedly engaged in bid rigging, court denied motion for separate trial on statute of limitations defense where evidence of actions taken in furtherance of the alleged scheme — such as submitting prearranged losing bids to give the illusion of competition — was also relevant to whether the scheme was concealed; thus "a separate trial, rather than saving time and effort, will probably require duplication of both").

Just because this is a RICO case does not warrant any departure from these settled principles. Indeed, as we show below, trying RICO claims and related common law claims at the same time is common practice in the Sixth Circuit. In contrast, the only RICO case defendants cite in which a Rule 42(b) motion was granted — a New York district court decision

— was grounded not on anything peculiar about RICO but on the lack of overlapping evidence between the RICO claims and others.[4]

C. *Virtually all RICO actions involve a single trial of both RICO claims and related common law claims with no unwarranted "prejudice" to defendants.*

Although defendants repeatedly incant that trying the RICO claims with plaintiffs' fraud and other common law claims will "prejudice" them, they are unable to explain how that can be so, given the overlap of proof and the fact that DeLorean and Logan will stand accused of fraud in any event, whether of the common law or mail and wire variety. Defendants' argument in fact reduces to the old saw that RICO claims are inherently

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4. Defendants argue that an initial trial of plaintiffs' common law claims will dispose of the need to conduct a RICO trial unless plaintiffs recover "all" of the fees claimed under Count II of their Complaint alleging common law fraud. Def. Br. at 10. This is simply not true. If defendants recover *any* of their fees under their common law fraud theory, the same evidence of fraud will be admissible to prove that defendants engaged in a pattern of racketeering in violation of RICO. The Court would then have to conduct a second trial on plaintiffs' RICO claims — involving the same witnesses and documentary proof as the first trial.

The only way a second trial would be unnecessary is if plaintiffs fail to recover *any* of their fees under Count II, their common law fraud claim. This is highly unlikely considering that it is undisputed (a) that defendants secretly hired The Freidberg Law Corporation in October of 1990 to sue plain-future fees to induce plaintiffs to continue providing defendants with legal services, while secretly planning their baseless malpractice suit and with no intention of paying. *See, e.g.*, JM Aff, Exh 31; Exh 39 at 18.

prejudicial — a notion that has long since been rejected by the courts. Almost every RICO action filed in federal court includes pendent state law claims of fraud and other common law claims, yet a review of recent RICO jury verdicts appealed to the Sixth Circuit confirms that RICO and common law claims are all *routinely* tried together in the same proceeding, as one would expect. *See, e.g., Davis v. Mutual Life Ins. Co.*, No. 90-3560, 1993 U.S. App. LEXIS 24254, at *1 (6th Cir. Sept. 21, 1993) (appeal from jury verdict finding defendants liable under RICO, as well as under principles of common law fraud, breach of contract and breach of fiduciary duty); *Thompson v. Paasche*, 950 F.2d 306, 310 (6th Cir. 1991) (appeal from jury verdict on both RICO and common law fraud claims); *Molecular Technology Corp. v. Valentine*, 925 F.2d 910, 923-24 (6th Cir. 1991) (verdict form appended to opinion reflects jury trial encompassing Rule 10b-5 claims, RICO claims and state common law claims for negligent misrepresentation); *Fleischhauer v. Feltner*, 879 F.2d 1290, 1295 (6th Cir. 1989) (appeal of jury verdict on RICO and state law fraud claims), *cert. denied*, 493 U.S. 1074 (1990).[5]

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5. Defendants say that they will suffer "prejudice" if plaintiffs' RICO claims and plaintiffs' common law claims are tried together, because the jury will be exposed to evidence of defendants' fraud not merely on Morganroth, but on other victims as well. Def. Br. at 6. The argument is without merit. Such proof is inherent in any RICO case; one might as well argue that all RICO trials should be bifurcated, first to prove whether there were at least two predicate acts within a ten-year period and, if the jury so finds, then to conduct a second trial on "pattern" in which evidence of multiple victims and schemes would be introduced. Moreover, the Court can always give appropriate limiting instructions, for example that the frauds the Bankruptcy Trustee accused DeLorean of committing are relevant to the issue of a RICO pattern and to Morgauroth's defense of the

(Cont'd)

Appendix M

Out of the hundreds of RICO cases filed every year in federal district courts around the country, virtually every one of which includes pendent common law claims, defendants have found only one case in which a court granted a Rule 42(b) motion. Defendants, lone citation to *Duttle v. Bandler & Kass*, No. 82 Civ. 5084, 1990 WE 113187 (S.D.N.Y. July 25, 1990) is unpersuasive, however, because *Duttle*, as we show below, did not involve overlapping proof between the claims asked to be separated. Moreover, as we also show below, in a RICO action where, as here, there *was* overlapping evidence relevant to both the RICO and related common law claims, the court denied a Rule 42(b) motion. *Gordon v. Tyndall*, No. C-86-1397, 1987 U.S. Dist. LEXIS 16018 (N.D. Cal. Apr. 23, 1987).

The plaintiffs in *Duttle*, who alleged that they were induced to purchase worthless shares of stock in four companies, claimed that the law firm defendant, which had acted as SEC counsel to the companies, participated in the fraudulent scheme. Plaintiffs sought to recover against the firm, alleging RICO, federal securities fraud and New York State common law fraud claims. But in *Duttle*, unlike this case, only one isolated alleged RICO predicate act had *any* relevance to plaintiffs' other claims. Hence,

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malpractice allegations but do not prove that he is entitled to a particular fee. *See, e.g.*, 3 Edward J. Devitt, Charles B. Blackmar & Michael A. Wolff, *Federal Jury Practice and Instructions*, Civil § 70.03, at 8 (4th ed. 1987) ("Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose only, you must consider it only for that limited purpose and for no other.") The Court can, in the same vein, give what has become a standard instruction — that the jury not be prejudiced by the word "racketeering." *See, e.g.*, 4 Leonard B. Sand, et al., *Modern Federal Jury Instructions* ¶ 84.04, Instruction 84-20 (1993).

as the court found, there was virtually no "overlap" of evidence between the two sets of claims: "The securities fraud in this case involved misrepresentations made by [the mastermind of the claimed fraudulent scheme] that defendants were allegedly aware of and aided and abetted. That type of fraud is *substantially different* from the other predicate acts alleged." *Duttle*, 1990 WL 113187 at *7 n.15 (emphasis added). The court concluded, therefore, that, "given that only one of the predicate acts should be admitted . . . on the underlying [securities] fraud case, it is appropriate . . . to have separate trials on the RICO and securities fraud claims." *Id.* at *7. Here, in sharp contrast, numerous predicate acts of mail and wire fraud relating to the RICO scheme to deprive Morganroth and other attorneys of legal fees are also core evidence supporting plaintiffs' fraud and other common law claims, and the other fraudulent schemes are directly relevant to DeLorean's malpractice defense.[6]

This case is thus akin not to *Duttle*, but to *Gordon v.* Tyndall, No. C-86-1397, 1987 U.S. Dist. LEXIS 16018 (N.D. Cal. Apr. 23, 1987), in which the court denied a Rule 42(b) motion precisely because the RICO claim and the claims sought to be severed involved "overlapping" proof. The action, brought against a securities firm and two of its employees, alleged RICO violations, state and federal securities fraud claims, and common law breach of contract and negligence claims. The defendants filed a third-party claim for indemnity against a bank and an individual, Frances Reyes. Reyes then counterclaimed against the securities firm and its employees and moved, pursuant to

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6. We note that defendants' citation to *Duttle* may be incomplete. The RICO Business Dispute Guide on which defendants rely provides only the sections of the opinion relating to RICO. The entire opinion is available on WESTLAW at 1990 WL 113187.

Rule 42(b), to sever both the third-party complaint and her counterclaim from the RICO and other claims in the main action. In words that would apply here as well, the court denied the motion because of the substantial overlap in proof and the fact that Reyes — like DeLorean and representatives of Logan here — would be a key witness on all of the RICO and non-RICO claims:

> [T]he Court finds that contrary to Reyes' contentions, a severance of the third-party complaint and Reyes' counterclaim would not further convenience or be conducive to expedition and economy. . . . [T]he factual underpinnings of the main action [containing RICO claims], the third-party action, and the counterclaim are overlapping; and, a logical nexus between the two actions exists. Reyes will be a key witness in the main action. Additionally, a severance of the actions would result in the substantial duplication of witness testimony.

Id. at *4. *See also Arnette v. Bankers Trust Co. N.A.*, No. 87-1190, 1987 U.S. Dist. LEXIS 9143, at *7 (E.D. La. Sept. 24, 1987) (denying motion for separate trial in RICO action and holding that "in the absence of any clear prejudice to these defendants (and we find none), any bifurcation of the trial is unwarranted, especially in light of the burden it would create for the plaintiffs and for the court").

In this case, as in *Gordon*, the "factual underpinnings" of plaintiffs' RICO and common law claims are "overlapping," and bifurcation "would result in the substantial duplication of witness testimony." *Gordon*, 1987 U.S. Dist. LEXIS 16018, at *4. In these circumstances, the Court should not depart from "the usual rule" of a single trial.

Appendix M

CONCLUSION

For all of the foregoing reasons, this Court should deny defendants' motion and conduct one trial encompassing all of plaintiffs' claims.

Respectfully submitted,

By s/ Mayer Morganroth

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Dated: February 14, 1994

APPENDIX N — PLAINTIFFS' BRIEF IN OPPOSITION DATED DECEMBER 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW (FED. R. CIV. P. 50(a)) RE PLAINTIFFS' RICO CLAIM

PRELIMINARY STATEMENT

Defendants' Motion for a directed verdict pursuant to Fed. R. Civ. P. 50(a) represents the third challenge made by Defendants to the very same issues regarding the sufficiency of Plaintiffs' RICO pleading and proof.

By Motion to Dismiss dated May 1993 and Motion for Summary Judgment dated December 1993, Defendants previously challenged Plaintiffs' pleading and proof regarding (i) the existence of a RICO enterprise; (ii) the existence of a pattern of racketeering activity; (iii) the existence of mail and/or wire fraud in connection with the Morganroth Scheme, (iv) the existence of injury to business or property by reason of violation of the RICO statute; and (v) the standing of Plaintiffs to pursue a RICO claim against their former clients. By Order dated July 30, 1993, this Honorable Court rejected Defendants' challenge to the sufficiency of Plaintiffs' RICO pleading in the context of Defendants' Motion to Dismiss, and resolved the aforementioned issues as a matter of law in favor of Plaintiffs. Thereafter, by Order dated February 28, 1994, this Honorable

Appendix N

Court rejected Defendants' challenge to the sufficiency of Plaintiffs' pleading and proof regarding the aforementioned issues in the context of Defendants' Motion for Summary Judgment, and determined that genuine issues of material fact exist sufficient for jury determination.

Now, Defendants again raise the same challenges to the sufficiency of Plaintiffs' pleading and proof regarding the RICO claim. But the legal propositions urged upon the Court by Defendants already have been rejected in both the July 30, 1993 Order and the February 28, 1994 Order as a matter of law. Furthermore, the sufficiency of Plaintiffs' proof also has resolved in favor of Plaintiffs by this Court's February 28, 1994 Order. In responding to Defendants' December 1993 Motion for Summary Judgment, Plaintiffs cited and relied upon the deposition testimony of DeLorean, Beeley, Mitchell, Rapetti, Schade, Thomopolous, and Weinberg to show that there is a genuine issue of material fact for jury determination. The very same deposition testimony has been read into the record at trial due to the unavailability of such witnesses. Plaintiffs also cited and relied upon deposition testimony of Weitzman, Morganroth, and Kimmerly in responding to Defendants' December 1993 Motion for Summary Judgment, which precise testimony was elicited at trial when the witnesses testified live. Not only has the identical testimony relied upon by the Court in denying Defendants' December 1993 Motion for Summary Judgment been introduced at trial, but the exhibits referred to by Plaintiffs in opposition to said Motion also have been introduced into evidence at trial as well, and additional supporting live testimony has been elicited at trial from witnesses such as Shaler, Jeffrey Morganroth, and Keating, additional supporting exhibits have been introduced into evidence at trial, and Stipulations of Fact set out in Exhibit 973 have been introduced into evidence as well.

Appendix N

STANDARD OF REVIEW

A motion for directed verdict, such as filed by Defendants with respect to Plaintiffs' RICO claim, is governed by Fed. R. Civ. P. 50(a).

Rule 50(a), in its most recent form, provides as follows:

> (a) Judgment as a Matter of Law. (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
>
> (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

In order for a defendant to sustain a motion for a directed verdict pursuant to Fed. R. Civ. P. 50(a), the defendant must demonstrate "a complete absence of pleading or proof on an issue material to the cause of action" or the absence of any disputed issue of fact such that reasonable minds would not differ. *Tuck v. HCA Health Services of Tennessee Inc.*, 7 F.3d 465, 469 (6th Cir. 1993). In determining whether a defendant has satisfied its requisite burden, the trial court is to consider "the evidence in a light most favorable to the party against

whom the motion is made, giving that party the benefit of all reasonable inferences." *Id.* Moreover, as clearly articulated by the Sixth Circuit Court of Appeals in *Boutros v. Canton Regional Transit Authority*, 997 F.2d 198, 202 (6th Cir. 1993), an opinion this Honorable Court is well familiar with, it is well settled that a trial court may not make credibility determinations of witnesses, weigh the evidence or substitute its judgment for that of the jury in determining a motion for directed verdict. *See also*, *McDowell v. Rogers*, 863 F.2d 1302, 1307 (6th Cir. 1988). The Sixth Circuit Court in *Boutros*, *supra*, stated:

> Moreover, it is not the function of the trial court but rather that of the jury to make credibility determinations on disputed questions of fact. If sufficient evidence is presented in Plaintiff's case for a reasonable juror, if he or she found it credible, to find in Plaintiff's favor, the case must be submitted. All credibility questions must be considered most favorably to the nonmoving party, and their resolution left to the jury. *United States v. Evans*, 883 F.2d 496, 501 (6th Cir. 1989) ("[i]ssues of witness credibility . . . are strictly for the jury to determine"), *citing*, *United States v. Schultz*, 855 F.2d 1217, 1221 (6th Cir. 1988); *Chrysler Workers Ass'n. v. Chrysler Corporation*, 834 F.2d 573, 578 (6th Cir. 1987) ("[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge, . . ."), *citing*, *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L.Ed.2d 202, 216 (1986).

Accordingly, a trial court may only grant a directed verdict if there is a complete absence of proof, not on the ground that it

believes one witness and not another or on the ground that it has resolved issues of fact after weighing the evidence. *Boutros*, 997 F.2d at 202; *McDowell*, 863 F.2d at 1307.

ARGUMENT

I. A DIRECTED VERDICT MAY NOT BE RENDERED WITH RESPECT TO PLAINTIFFS' RICO CLAIM PURSUANT TO FED. R. CIV. P. 50(a).

Defendants' motion misses the mark since it is premised upon making credibility determinations regarding the testimony of witnesses, weighing the evidence adduced at trial, ignoring and disregarding evidence adduced at trial, and substituting their judgment for that of the jury. The law is clear that a directed verdict may not be rendered pursuant to Fed. R. Civ. P. 50(a) upon the considerations taken into account and urged upon this Honorable Court by the Defendants. In fact, it is abundantly clear that more than sufficient evidence has been adduced at trial with respect to each issue identified in Defendants' Brief to defeat the instant Motion, especially when viewing the evidence in the light most favorable to Plaintiffs and drawing all reasonable inferences in favor of Plaintiffs as well.

A. *More than sufficient evidence of a RICO enterprise has been adduced at trial.*

The United States Supreme Court has made clear that a RICO association in fact enterprise, as that term is defined in 18 U.S.C. § 1961(4), is "a group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette*, 452 U.S. 576, 583 (1981). The definition of an association in fact RICO enterprise is to be

construed liberally and it is a broader concept than that of ordinary conspiracy. *Turkette*, 452 U.S. at 587, *quoting*, Pub. L. No. 91-452 § 904(a), 84 Stat. 922, 944 (1970); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-498 (1985); *United States v. Russo*, 796 F.2d 1443, 1462 (11th Cir. 1986). So long as a common purpose ties together a group of individuals and/or entities, an enterprise is formed even if not every member of the enterprise knows all of the other members of the enterprise or has knowledge of all the details of the fraudulent schemes. *United States v. Rastelli*, 870 F.2d 822, 828 (2nd Cir. 1989), *cert den.*, 493 U.S. 982 (1989); *United States v. Elliott*, 571 F.2d 880, 898, 903-904 (5th Cir. 1978).

A factual issue as to the existence of a RICO enterprise is established "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as continuing unit." *Turkette*, 452 U.S. at 483. Circumstantial evidence alone is sufficient to establish a factual issue as to the existence of a RICO enterprise since the affairs of the enterprise are likely to be conducted in secrecy and involve a minimal amount of necessary contact between the participants. *United States v. Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990), *cert den.*, 454 U.S. 1136 (1982); *United States v. Griffin*, 660 F.2d 996, 1000 (4th Cir. 1981); *Elliott*, 571 F.2d at 898.

The evidence adduced at trial more than sufficiently establishes a factual issue as to the existence of an ongoing association in fact, formal or informal, consisting of DeLorean and Logan, along with others such as Nesseth, Cristina Corporation, Cristina Holdings Corporation, GPD, Bushell, and Chapman, that has functioned as a continuing unit with the shared common purpose of obtaining and then preserving funds through unlawful acts perpetrated against third parties,

including, but not limited to, attorneys, especially if viewed in the light most favorable to the Plaintiffs when drawing all reasonable inferences to their benefit.

An agreement to associate with and participate in the affairs of said RICO enterprise by DeLorean, Logan and their associates may be inferred from the individual's or entity's acts. *See, Hughes,* 895 F.2d at 1141, *citing, United States v. Joseph,* 835 F.2d 1149, 1152 (6th Cir. 1987). The acts committed by DeLorean, Logan and their associates as members of the enterprise reveal their coordinated nature and association, the requisite continuity of structure and personnel, and a pattern of roles, which was necessary to carry out the racketeering activity and derive assets, monies, and properties from third parties, including, but not limited to, attorneys. In fact, the coordinated nature of DeLorean's and Logan's acts alone is sufficient to create the inference of an ongoing association with a common purpose. *See, United States v. Oaoud,* 777 F.2d 1105, 1116 (6th Cir. 1985), *cert den.*, 475 U.S. 1098 (1986). An association in fact enterprise consisting of at least DeLorean and Logan is plainly established by the evidence, which satisfies all requirements of a RICO enterprise, even if all of the other co-conspirators were somehow found not to have been members at any time. *See, United States v. Perholtz,* 842 F.2d 343, 364 (D.C. Cir. 1988). Although Defendants erroneously continue to argue that an enterprise consisting solely of DeLorean and Logan would not be distinct from the RICO persons named as Defendants for purposes of Plaintiffs' § 1962(c) claim since said parties are affiliates,[1] this Honorable Court's July 30, 1993

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1. Defendants do not make this argument with respect to Plaintiffs' other RICO claims — 1962(a) claim, 1962(b) claim or 1962(d) claim — since even Defendants acknowledge that no distinction requirement exists with respect to those claims.

Order already definitively rejected Defendants' contention based upon case law and resolved said issue in favor of Plaintiffs as a matter of law.

In any event, the evidence adduced at trial creates a factual issue as to whether DeLorean, Logan and their confederates joined together in an association in fact RICO enterprise to commit the DRLP Scheme, the DMCL Scheme, the Gorman Scheme, the Eureka Scheme, numerous Attorney Schemes as well as other RICO schemes to defraud. With respect to each such scheme, DeLorean, Logan and their confederates performed acts commensurate with their roles in the enterprise in furtherance of the schemes as follows: DeLorean was the ring leader who presided over the day-to-day management decisions of the affairs of the enterprise; Logan managed, held, and disbursed funds derived from the schemes; Chapman exercised substantial input and control over the affairs of the enterprise by using his relationship with GPD and Lotus and his professional skills to the benefit of the enterprise until he died in 1982[2]; Bushell assisted in carrying out various schemes by

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2. Defendants continue to contend that Chapman's death somehow affects the continuity of the enterprise, notwithstanding this Honorable Court's July 30, 1993 and February 28, 1994 Orders which rejected Defendants' very contention. As previously demonstrated, Chapman's death in 1982 had no such effect as a matter of law since "the continuity requirement does not mean that individuals cannot leave the group or that new members cannot join at a later time." *Perholtz*, 842 F.2d 343, *cert den.*, 488 U.S. 821 (1988), *quoting, United States v. Riccobene*, 709 F.2d 214, 223 (3rd Cir.), *cert den.*, 464 U.S. 849 (1983). In truth, Chapman died a member of the enterprise since he had not withdrawn from the enterprise before his death through an affirmative act. *United States v. Martino*, 648 F.2d 367, 397 (5th Cir. 1981), *cert den.*, 456 U.S. 949 (1982), *citing, United States v. Bradsby*, 628 F.2d 901 (5th Cir. 1980).

using his position as finance director of Lotus and co-owner of GPD along with his professional skills as an accountant to the benefit of the enterprise; GPD was used as a device to carry out certain schemes on behalf of the enterprise through the direction of Chapman and Bushell who formed and owned GPD; Cristina Corporation helped wash and funnel funds to DeLorean derived from the schemes upon the premise of repayment of a "multi-tiered loan," and attempted to hide the trail of funds derived by the enterprise by way of cover-up activities; Cristina Holdings Corporation helped wash and funnel funds derived from various schemes to DeLorean through the purchase and sale of art, antiques, and furniture; and Nesseth acted as the muscle man and antagonist on behalf of the enterprise.

Although DeLorean has refused to appear at trial to testify and specifically refused to honor Plaintiffs' subpoena calling for his appearance as a witness at trial, DeLorean's own deposition testimony in the instant action, which was read into the record at trial, as well as the Stipulation of Facts contained in Exhibit 973, more than sufficiently creates a factual issue as to the existence of a RICO association in fact enterprise as proferred below:

- DeLorean was the founder of the DeLorean entities that were established in the late 1970's to participate in the design, development, and manufacture of the DeLorean automobile.

- Chapman was the chairman and controlling shareholder of Lotus, which was being pursued to perform the research, development, and manufacture of the DeLorean automobile. Chapman also formed and owned GPD.

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- DeLorean, Chapman, and GPD agreed that GPD would be used as the device to enable Chapman to work on the design, engineering, and manufacture of the DeLorean automobile without alerting the minority shareholders of Lotus as to what was occurring since the DeLorean automobile had the potential of putting Lotus out of business.

- Chapman received substantial consideration in return for his participation, including, but not limited to, cash and stock options.

- Bushell was the finance director of Lotus and co-owner of GPD.

- GPD was a Panamanian corporation formed and controlled by Chapman and Bushell.

- GPD acted as the contracting party, in agreements with DRLP and DMCL, wherein GPD assumed the role and responsibility of the manufacture of the DeLorean automobile.

- Through its contract with DRLP and DMCL, GPD participated in the secret diversion of $8.5 million, which became approximately $9.4 million with interest, from the funds raised for the research and development of the DeLorean automobile by DRLP without notifying the DMCL board, DRLP or any third party.

- DeLorean and Chapman, by way of the GPD contract with DRLP and DMCL, devised the plan to divert the $8.5 million, which became approximately $9.4 million

with interest, from the funds raised for the research and development of the DeLorean automobile by DRLP.

- Through a series of secret back to back bank transactions, $8.9 million of the $9.4 million diverted from the GPD contract was transferred to DeLorean's Citibank bank account.

- The funds then were used to the personal benefit of DeLorean by paying off his line of credit, purchasing jewelry for his wife, and purchasing commercial paper; and to the benefit of Logan by paying off its acquisition loan.

- The $8.9 million received from the GPD contract was carried on the books of Logan as a loan payable to Cristina Corporation which in turn carried on its books a loan payable to DeLorean (the "Cristina Note").

- Logan continually funneled funds to DeLorean under the guise of repaying the Cristina Note.

- Cristina Holdings Corporation purchased art, antiques, and furniture from the funds generated by the enterprise, and then washed and funneled funds and assets to DeLorean.

- DeLorean met with individuals whom he believed were mafia in an effort to obtain $10 million in consideration for the transfer to them of 100% ownership in a shell corporation with no assets (the "Eureka Scheme").

- DeLorean directed the preparation of a blind trust agreement in furtherance of the Eureka Scheme, which

trust even called for Cristina Corporation to contribute shares of stock.

- Logan was offered to the supposed mafia members as a money laundering device in furtherance of the Eureka Scheme.

- Nesseth was brought in by DeLorean as a muscle man. Nesseth and DeLorean had a long time friendship, business association, and affiliation, and Nesseth lived in a house owned by DeLorean.

- Nesseth was placed in official positions such as vice chairman of Logan and director of DMC.

- Nesseth's association with DeLorean and Logan continued notwithstanding admonitions of Weitzman, Morganroth, Kimmerly, and others.

- Nesseth participated in funding the $100,000 earnest money deposit in furtherance of the attempt by members of the enterprise to fraudulently purchase the assets of DMC out of bankruptcy through the so-called Gorman Group (the "Gorman Scheme").

- The Gorman Group was a front for DeLorean, Logan, Nesseth, and their confederates.

- Logan disbursed the $100,000 earnest money deposit in furtherance of the Gorman Scheme.

- With the consent of DeLorean, Logan paid substantial amounts to Nesseth far and above any salary he would have been entitled to as an officer of the corporation, and

improperly forgave substantial debts Nesseth owed to Logan.

- Nesseth was deemed an affiliate and alter ego of DeLorean.

- Both Logan and DeLorean made representations and promises to pay legal fees and expenses to attorneys for legal services performed in defense of alleged acts committed by members of the enterprise in furtherance of the enterprise's RICO schemes such as the DRLP Scheme, the DMCL Scheme, the Gorman Scheme, the Eureka Scheme, and even certain Attorney Schemes.

- Notwithstanding representations and promises that full payment would be made by DeLorean and Logan to attorneys, Logan and/or DeLorean failed to satisfy such legal fees and expenses owed to numerous attorneys, including, but not limited to, Weitzman, Berger, Simon, Kimmerly, Morganroth, and Weinberg for legal services rendered.

- Logan sent to Morganroth its audited financial statements certified under oath by DeLorean as being true and accurate which reflected the legal fees owing to Morganroth, and which Morganroth relied upon in continuing to provide services.

- Logan and DeLorean made representations, certifications, and acknowledgments to Morganroth and Weinberg regarding the outstanding balance owed to them and their law firms respectively and promised payment in full even for 2½ years after Logan and DeLorean already had retained Freidberg Law Corporation to sue Morganroth and Weinberg, and had no intention of paying them.

- Logan and DeLorean made partial payments to the attorneys such as Weitzman, Berger, Simon, Kimmerly, Morganroth, and Weinberg for legal services rendered, which the attorneys believed at the time to be good faith payments, thereby stringing them along.

In addition, other witnesses such as Kimmerly, Shaler, Thomopolous, Beeley, Rapetti, Weinberg, and Schade testified and provided additional details regarding the continued association, coordination of roles, and pattern of activity by DeLorean, Logan and their confederates as members of an enterprise regarding the DRLP Scheme, DMCL Scheme, Eureka Scheme, Gorman Scheme, and Attorneys Schemes, thereby confirming and even adding to DeLorean's testimony.

Moreover, numerous exhibits in evidence demonstrate or at least create a factual issue as to the coordinated nature, continuity and association of DeLorean, Logan and their confederates with respect to the complained of schemes, as well, such as Exhibits 6(B), 12, 15, 27, 31(A), 31(B), 34, 35, 36, 48, 56, 405, 420, 422, 423, 545, 596, 599, 605, 618, 620, 686, 910, 952, 953(A)–953(C), and 954–959.

Accordingly, it is abundantly clear from the evidence that a factual issue exists as to whether the requisite elements of an association in fact enterprise are present. As in *Elliott*, *supra*, the above referenced facts give rise to the inference that DeLorean and Logan knew that they were directly involved in an enterprise whose purpose was to profit from schemes to defraud.

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B. *More than sufficient evidence of the pattern of racketeering activity has been adduced at trial.*

The RICO statute defines racketeering activity as the commission of any act delineated in 18 U.S.C. § 1961(1). *See*, 18 U.S.C. §1961(1). Furthermore, the RICO statute defines the pattern element as requiring the commission of at least two predicate acts of racketeering within ten years of each other. *See*, 18 U.S.C. §1961(5). The two predicate acts must be related and amount to or pose a threat of continued activity in order to be considered in connection with the pattern element. *See*, *Sedima*, 473 U.S. at 496; *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229, 239–243 (1989). Predicate acts are "related" if they have "the same or similar purposes, results, participants, victims or methods of commission, or otherwise are interrelated." *Id.* So long as "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts," the predicate acts are considered to be "related." *Silverman v. Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich 1991); *citing, Robinson v. Kidder, Peabody & Co.*, 674 F. Supp. 243, 246 (E.D. Mich. 1987). In addition, the Supreme Court has explained that "continuity" is "a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its very nature projects into the future with a threat of repetition." *H.J. Inc.*, 492 U.S. at 241. *See also*, *United States v. Busacca*, 936 F.2d 232, 237 (6th Cir. 1991). Thus, the continuity element is satisfied where the predicate acts extend over a substantial period of time or can be attributed to a defendant operating as part of a long term association or by its very nature projects into the future with a threat of repetition. *H.J. Inc.*, 492 U.S. at 242–243.

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Although RICO enterprises often engage in multiple interrelated RICO schemes, as is the case here, the Sixth Circuit Court of Appeals expressly has held that the commission of at least two predicate acts occurring within ten years of each other in furtherance of even a *single* fraudulent scheme is sufficient to satisfy the pattern of racketeering activity element. *Newmyer v. Phitaletic Leasing, Ltd.*, 888 F.2d 385, 396–397 (6th Cir. 1989). *Accord, Dana Corp. v. Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886–887 (6th Cir. 1990) (emphasis supplied). Accordingly, although it is sufficient for purposes of this Motion to merely identify a factual issue as to the commission of at least two predicate acts in furtherance of even *one single* fraudulent scheme, such as the Morganroth Scheme, more than sufficient evidence has been adduced at trial to establish a factual issue as to the commission of numerous predicate acts[3] in furtherance of the Morganroth Scheme as well as other multiple interrelated schemes (the DMCL Scheme, DRLP Scheme, Eureka Scheme, Gorman Scheme, Simon Scheme, McConnell Scheme, Weinberg Scheme, Weitzman Scheme, Kimmerly Scheme, Bailie Scheme, and Creditors Scheme) with common purpose, results, participants or methods of commission. Due to space limitations, only a sampling of such evidence is delineated below with respect to a few of such interrelated RICO schemes.

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3. Plaintiffs have alleged and produced evidence at trial that Defendants committed the following five different types of predicate racketeering acts as specified and defined in 18 U.S.C. § 1961(1) in furtherance of the conspiracy and pattern of racketeering activity: (1) violation of 18 U.S.C. § 1341 ("Mail Fraud"); (2) violation of 18 U.S.C. § 1343 ("Wire Fraud'); (3) violation of 18 U.S.C. § 1952 ("False Pretenses"); (4) violation of 18 U.S.C. § 1956 ("Money Laundering"); and (5) violation of 18 U.S.C. §1957 ("Unlawful Monetary Transaction").

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The Morganroth Scheme

The testimony of Morganroth, DeLorean, and Kimmerly reveals that Morganroth was retained in or about November 1982 to provide legal representation to DeLorean and Logan. Morganroth, DeLorean, Kimmerly, and Beeley further testified that Morganroth and his firm provided extensive legal services from November 1982 through January 1993 in connection with a multitude of matters and cases arising out of the illicit activities perpetrated by the members of the enterprise based upon what Morganroth has since learned, according to the testimony of Morganroth and Kimmerly, were DeLorean's and Logan's fabricated versions of events. Morganroth and Jeffrey Morganroth testified that Morganroth rendered legal services in reliance upon repeated promises and representations that he would be fully compensated for all legal services performed, which DeLorean, Beeley, and Mitchell confirmed during their testimony.

Unbeknownst to Morganroth, DeLorean and Logan never had any intention of paying him for legal services, and DeLorean and Logan also repeatedly misled him as to the true facts regarding the matters that Morganroth handled, as indicated in the testimony of Morganroth and Kimmerly. Morganroth and Jeffrey Morganroth further testified that Morganroth relied upon DeLorean's and Logan's representations of full payment and provided extensive legal services day and night for approximately ten years because Morganroth thought he had a relationship of mutual trust and friendship with DeLorean; because DeLorean and Logan had confirmed and acknowledged the outstanding amounts owed to Morganroth on a regular basis orally, in writing, under oath, and in sworn testimony; because DeLorean and Logan constantly praised Morganroth's skills

and competency and expressed their gratitude and satisfaction with respect to legal services rendered; because DeLorean and Logan pleaded and begged Morganroth to continue providing legal services; because partial payments were received which Morganroth had viewed as being made in good faith; and because DeLorean repeatedly stated that Morganroth was the best lawyer in the country and had saved his life and Defendants' assets, which testimony was confirmed by DeLorean, Beeley, Mitchell, Rapetti, Schade, Kimmerly, and Keating. Accordingly, Morganroth and Jeffrey Morganroth testified that when DeLorean and Logan represented at various times throughout the ten year period that they did not have available funds to pay Morganroth but that full payment would be made as soon as funds became available or constantly unrestrained, Morganroth believed them and continued to provide legal services.

Eventually, notwithstanding the repeated promises and representations, DeLorean and Logan failed to satisfy their outstanding balance even though it became apparent that funds had become available and unrestrained as testified by Morganroth, Jeffrey Morganroth, DeLorean, Beeley, Mitchell, and Rapetti. Morganroth and Jeffrey Morganroth further testified that when Morganroth pressed for payment as he learned that monies became available and assets and properties were released, DeLorean and Logan represented that Morganroth would be paid at the closing of the sale of the New York Cooperative, but just prior to the closing Morganroth was told that no funds would be available, as confirmed by DeLorean's testimony. Morganroth and Jeffrey Morganroth testified that Morganroth then was told that he would be paid at the closing of the sale of Logan's assets, but just prior to the closing he was told by Defendants that the funds would not be disbursed to him until

the end of January, 1993 due to tax considerations, as confirmed by the testimony of DeLorean and Beeley. Morganroth and Jeffrey Morganroth further testified that just prior to the end of January, Morganroth was told that he would be paid during the first couple of days of February in connection with a transaction involving DeLorean's New Jersey estate, which DeLorean confirmed in part during his testimony.

Meanwhile, the testimony of Shaler reveals that DeLorean had received and obtained large sums of money during the very time that he was making representations of financial hardship to Morganroth. In addition, the testimony of DeLorean and Beeley reveals that DeLorean, Logan, and the other members of the enterprise had been plotting with Freidberg to institute a sham action against Morganroth instead of satisfying the unpaid balance as promised during the very time period that the representations and promises of payment were repeatedly made to Morganroth. As indicated by DeLorean in his testimony, DeLorean and Logan secretly retained Freidberg in October 1990 to sue Morganroth when the time was right in order to avoid payment to Morganroth for the large unpaid balance they owed, but that for the period of 2½ years after the retention of Freidberg, DeLorean and Logan continued to use Morganroth to perform additional legal services and continued to repeatedly make representations and promises of full payment without having any intention of doing so. The testimony of Morganroth and Jeffrey Morganroth reveals that in furtherance of the Morganroth Scheme, Freidberg called Morganroth, after having been retained to sue Morganroth, and obtained information from Morganroth relevant to the lawsuit secretly planned to be filed against Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Wyman Bautzer litigation. The testimony of Morganroth,

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Jeffrey Morganroth, DeLorean, Beeley, and Shaler indicates that Morganroth was fraudulently induced to perform substantial legal services on behalf of Defendants during the time period that Defendants secretly received large sums of money and also during the 2½ year period after the retention of Freidberg based upon DeLorean and Logan's repeated representations that they did not currently possess available funds to satisfy Morganroth's fees but that full payment would be made when assets became available or unrestrained, certifications of amounts due and owing to Morganroth, promises to pay all such amounts, expressions of gratitude and satisfaction, referral of clients, and repeated statements that Morganroth had saved DeLorean's life and Defendants' assets. Further evidence of the Morganroth scheme is found in Stipulation of Facts 30, 32, 34, 35, 53–55, 68, 69, 73, 77, 82, 83–86, 99–103 set out in Exhibit 973.

As part of the plan to perpetrate the Morganroth Scheme, the members of the enterprise committed the predicate acts of Mail Fraud[4] and Wire Fraud.[5]

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4. It is well settled that mail fraud has occurred even if the mailing does not contain any misrepresentations and even if the defendant lacks the actual intent to use the mails so long as the defendant acts with knowledge that use of the mails is reasonably foreseeable in connection with the scheme to defraud. *Pereira v. United States*, 347 U.S. 1 (1954); *United States v. Martino*, 648 F.2d 367, 401 (5th Cir. 1981). The mailing may even be incidental. *Dana Corp.*, 900 F.2d 882, 886 (6th Cir. 1990), *citing*, *Schmuck v. United States*, 109 S. Ct. 1443, 1447 (1989).

5. It is also well established that a violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *United States v. Hathaway*, 798 F.2d 902, 908, n.3 (6th Cir. 1986); *United States v. Tarnopol*, 561 F.2d 466, 471–473 (3rd Cir. 1977).

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First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. § 1341. DeLorean, Logan, and the other members of the enterprise constantly used the mails in furtherance of the scheme to defraud Morganroth over a ten year period. Morganroth, Beeley, and DeLorean testified to numerous mailings sent by DeLorean and/or Logan to Plaintiffs during a ten year period such as Exhibits 5, 326, 394, 395, 398, 447, 666, 1819, and 2347.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. § 1343. DeLorean, Logan, and the other members of the enterprise constantly telefaxed and telephoned Morganroth in furtherance of the scheme to defraud Morganroth over a ten year period. Morganroth, Jeffrey Morganroth, Beeley, and DeLorean all testified to repeated telephone calls placed by DeLorean and Logan to Plaintiff, an average 6 to 12 telephone calls per day during the ten year period, and countless telefaxes as well during such time period, some of which are in evidence such as Exhibits 334, 395, 411, 726, and 971.

The Weinberg Scheme

The testimony of Weinberg and DeLorean reveals the following: Weinberg and his firm were retained in or about 1987 to provide legal representation to DeLorean and Logan arising out of the DMCL and DRLP Schemes. Weinberg and his firm provided legal services to DeLorean and Logan through January 1993 in reliance upon repeated representations by DeLorean and Logan that all legal fees and expenses would be paid. During the course of providing legal services to DeLorean

and Logan, Weinberg and his firm demanded payment for legal services rendered but the unpaid fees and expenses mounted. When Weinberg and his firm continued to press for payment of the large unpaid balance, DeLorean and Logan repeatedly represented that they did not yet have the funds to satisfy the unpaid balance, but that all amounts would be paid in full as soon as the Logan asset sale was closed. In fact, DeLorean represented that he was an honorable man who always paid his bills. Ultimately, the assets of Logan were sold but no monies were paid to Weinberg or his firm, which left an unpaid balance of $325,000. Instead, during the very same period in which Defendants claimed to lack funds but promised full payment and in which Weinberg's firm continued to perform legal services in reliance upon representation of full payment, Defendants secretly retained Freidberg and paid him approximately $1.3 million to institute and prosecute a sham action against Weinberg and his firm in New York, which action was filed 2½ years after such retention. Weinberg and his firm have since filed counterclaims against DeLorean and Logan, charging RICO violations, fraud, and breach of contract. Further evidence of the Weinberg Scheme is found in Stipulation of Facts 28–34 and 50 set out in Exhibit 973.

As part of the plan to perpetrate the Weinberg Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Facts 50 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. § 1343. Weinberg testified that during the course of providing legal services to Defendants, Weinberg and his firm often spoke with DeLorean and others over the telephone, which DeLorean confirmed during his testimony as well. Such testimony further reveals that Weinberg and his firm repeatedly discussed with DeLorean over the telephone the fee arrangements and the failure to timely satisfy outstanding legal fees and expenses even after the secret retention of Freidberg. Weinberg further testified that during the course of providing representation, Weinberg received from and sent to Defendants numerous telefaxes, some of which he specifically identified during his testimony.

The Weitzman Scheme

The testimony of Weitzman and DeLorean indicates the following: In or about 1982, Weitzman was retained to defend DeLorean in the California cocaine case which arose out of the commission of the Eureka Scheme, and he eventually was named lead counsel. Thereafter, Weitzman also was hired to represent DeLorean and Logan in the multitude of civil lawsuits arising out of the illicit activities of the enterprise. Weitzman served in that capacity until in or about 1985. In addition, Weitzman also was retained as DeLorean's lead trial counsel in the Detroit criminal action, which focused on the diversion of the $8.5 million from the GPD contract. When Weitzman was retained as lead counsel in the California cocaine case, DeLorean represented that he would be paid $2.5 million for his legal services and expenses, but DeLorean never intended to pay Weitzman. DeLorean attempted to revise history in an effort to avoid the fee arrangement. At one point, it apparently became

clear to DeLorean, according to his testimony, that he might lose his Pauma Valley property to creditors so he transferred the property to Weitzman as a retainer for his fee; however, DeLorean always intended on getting the property back one way or another as revealed by the testimony of Shaler. At the same time, DeLorean represented to Weitzman that he would be paid a minimum of $2.5 million for the California cocaine case whether the property sold for that amount or not, since DeLorean would make up the difference. In addition, DeLorean also represented to Weitzman that he would be paid as much as an additional $5 million for services rendered in future litigation such as the Detroit criminal case. Weitzman only managed to obtain $1.1 million from the ultimate sale of the Pauma Valley property, an amount that did not even cover his expenses, but he could not recover even the remaining minimum balance of $1.4 million for services rendered in the cocaine case, let alone the fees and expenses incurred in connection with the Pauma Valley case or the Detroit criminal trial. Although Weitzman had been betrayed and conned, he eventually wrote off trying to be paid through DeLorean since he wanted nothing to do with DeLorean. In fact, although Weitzman obtained acquittals for DeLorean against great odds in the California cocaine case and the Detroit criminal trial, and provided extensive representation for DeLorean and Logan in connection with major civil lawsuits, DeLorean and Logan not only refused to fulfill their repeated representations regarding attorney fees and expenses, but DeLorean instituted a sham negligence, fraud, and breach of fiduciary duty counterclaim against Weitzman in an attempt to counteract the lawsuit filed by Weitzman's firm for unpaid attorney fees. As stipulated in this case and as DeLorean admitted in his deposition testimony, DeLorean had previously testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services

through the conclusion of the criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job that Weitzman performed for him. Further evidence of the Weitzman Scheme is found in Stipulation of Facts 13–21, 41–44, and 70 set out in Exhibit 973.

As part of the plan to perpetrate the Weitzman Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Facts 41–42 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. § 1343. In fact, Defendants stipulated to such use of the wires in Stipulation of Facts 43–`44 contained in Exhibit 973.

The Eureka Scheme

The testimony of DeLorean reveals that the members of the enterprise conspired to defraud Eureka and its principals out of substantial monies by attempting to cause Eureka and its principals (believed to be mafia by DeLorean) to provide $10 million to the enterprise for the supposed purpose of reopening the DMCL plant in exchange for all of the capital stock of DMCI, which stock supposedly represented ownership interest in the DeLorean car company. *See also*, Exhibit 12. In reality, DMCI was a shell corporation with no assets that had been formed by

the members of the enterprise with the intent of transferring all of the valueless stock to Eureka and its principals in exchange for the funds, which was confirmed by Kimmerly during his testimony. DeLorean testified and Exhibit 12 shows that in the summer and fall of 1982, members of the enterprise in fact agreed to transfer to Eureka and its principals the valueless stock of DMCI in furtherance of the conspiracy. DeLorean further testified that members of the enterprise understood and believed that Eureka was backed by the mafia and that the $10 million was realized through illegal activity. The members of the enterprise further understood and believed that the mafia was interested in the DMCI transaction in order to launder money obtained through illegal means, and consequently the mafia would not and could not protest when they discovered that they had been defrauded since their entire money laundering scheme would be disclosed. DeLorean further testified that in order to further entice Eureka and its principals to provide funds, Logan was offered as a vehicle for Eureka's money laundering operation.

As part of the plan to perpetrate the Eureka Scheme, the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the testimony of DeLorean and Kimmerly demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Fact 37 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. § 1343. In fact,

Defendants stipulated to such use of the wires in Stipulation of Facts 38 set out in Exhibit 973.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain monies under False Pretenses in furtherance of the Eureka Scheme. The testimony of DeLorean reveals that members of the enterprise attempted to defraud supposed members of the mafia out of $10 million under the False Pretenses that the mafia members would receive ownership in the DeLorean car company when in fact they would receive shares in a shell corporation with no assets. *See also*, Exhibit 12.

Fourth, the testimony of DeLorean demonstrates that members of the enterprise were attempting to launder monetary instruments in furtherance of the Eureka Scheme and engaging in monetary transactions in property derived from unlawful mafia activity.

The DRLP Scheme

The testimony of DeLorean and Kimmerly reveals the following: DeLorean Research Limited Partnership ("DRLP") was a limited partnership formed in 1979 for the purpose of overseeing the research and development of the DeLorean automobile. The members of the enterprise concocted a scheme to defraud DRLP and its partners by causing DRLP to enter into a bogus contract with GPD to perform the research and development. GPD was a Panamanian corporation established and controlled by Chapman and Bushell that supposedly was the agent of Lotus Cars Limited ("Lotus") and would subcontract the work to Lotus. The contract called for DRLP to provide approximately $17.8 million to satisfy GPD's fee and

the cost of the research and development. A private placement memorandum was prepared by members of the enterprise and presented to DRLP and its partners for the supposed purpose of soliciting and raising such funds. $8.5 million of the money raised pursuant to the private placement memorandum was secretly diverted by members of the enterprise through an escrow agreement and a complex series of back to back bank transactions. The $8.5 million, which had become approximately $9.4 million with interest,[6] eventually arrived in the United States and was used to pay off loans which had been borrowed to acquire Logan from Thiokol Corporation in 1978, and to purchase jewelry and other investments for DeLorean and Cristina Holdings Corporation. In order to further hide the trail of said funds, Logan then executed a promissory note in favor of Cristina Corporation, which was its parent corporation and wholly owned by DeLorean. Cristina Corporation, in turn, executed a promissory note in favor of DeLorean. Further evidence of the DRLP Scheme is found in Stipulation of Facts 3-10 set out in Exhibit 973.

As part of the plan to perpetrate the DRLP Scheme, the members of the enterprise committed predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DRLP Scheme in violation of 18 U.S.C. § 1341. DeLorean testified that the GPD contract, which was the vehicle for perpetrating the DRLP Scheme, was negotiated through the mail. Moreover,

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6. $8.9 million of these funds were funneled into the United States. The $500,000 balance was used to satisfy fees and costs incurred in connection with washing the funds through the laundering mechanism.

numerous letters were sent by DeLorean and others in order to put into motion the complex series of back-to-back bank transactions used to divert the monies as evidenced by Exhibits 31(B) and 77. In addition, Kimmerly testified that he received a letter from DeLorean through the mails as an apparent cover-up attempt of the DRLP Scheme (Exhibit 14).

Second, the evidence demonstrates that the members of the enterprise used the wires in furtherance of the DRLP Scheme in violation of 18 U.S.C. § 1343. DeLorean testified that the diverted funds were wired through a series of complex back-to-back bank transactions from the United Kingdom through Switzerland and the Netherlands to an account in the United States.

Third, the evidence demonstrates that money and property were obtained by members of the enterprise through False Pretenses. DeLorean's testimony reveals that a private placement memorandum was presented to DRLP and its partners for the supposed purpose of soliciting and raising $17.8 million for the research and development of the DeLorean automobile; however, the members of the enterprise intended to secretly divert a significant portion of those funds for their own benefit.

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in violation of 18 U.S.C. § 1956 through the use of secret back-to-back bank transactions as testified to by DeLorean in an effort to hide the trail of the funds.

Accordingly, a factual issue regarding the pattern of racketeering activity element is created merely by virtue of the predicate acts committed in furtherance of the Morganroth

Scheme. Each of the numerous mailings testified to and/or admitted into evidence as well as each of the repeated telephone calls and telefaxes testified to and/or admitted into evidence constitutes a predicate act of mail fraud and/or wire fraud, respectively. Such predicate acts by virtue of the repeated mailings, telephone calls, and telefaxes satisfy the pattern aspect since evidence of at least two such predicate acts of mail and/or wire fraud have been adduced at trial during a ten year time period. Moreover, the aforementioned predicate acts of mail and/or wire fraud also satisfy the relatedness element since such predicate acts by their very nature aimed at defrauding Morganroth as a victim had the "same or similar purposes, results, participants, victims or otherwise were interrelated" by distinguishing characteristics. *See*, *H.J. Inc.*, 492 U.S. at 240. In addition, such predicate acts satisfy the continuity aspect since they were committed during a period of repeated conduct that methods of commission, spanned and continued over a decade.

Furthermore, the additional predicate acts of Mail Fraud, Wire Fraud, False Pretenses, Money Laundering, and Unlawful Monetary Transactions committed in furtherance of the other schemes are further evidence of a pattern of racketeering activity as well. Such predicate acts also satisfy the relatedness and continuity aspect as previously determined by this Honorable Court in its July 30, 1993 Order and February 28, 1994 Order. The purpose of all of the RICO Schemes was to derive and obtain monies, income, and assets from the manufacture of the DeLorean automobile through the commission of racketeering predicate acts (the DRLP Scheme, DMCL Scheme, and Eureka Scheme) and then to hide and preserve the unlawfully derived and ill-gotten monies and assets through the commission of further racketeering predicate acts

(the Eureka Scheme, the Gorman Scheme, the Creditors Scheme, and the Attorney Schemes). Once again all of such predicate acts not only involved the same or similar purposes, but also the same or similar participants, results, and methods of commission as well. In addition, such predicate acts by their very nature satisfy the continuity aspect since they amount to repeated and continued activity for an extended period of time in excess of 13 years.

C. *More than sufficient evidence has been adduced to establish reasonable reliance.*

With respect to the Morganroth Scheme, Defendants erroneously contend that Plaintiffs have produced no evidence of reliance in connection with Plaintiffs' allegations of mail and wire fraud. However, it appears from Defendants' argument regarding reliance that they have confused the elements of mail and/or wire fraud, apparently taking the position that some misrepresentation must be contained in the communication sent through the mail or wire. As previously discussed, the law is clear that so long as misrepresentations have been made in furtherance of a scheme to defraud, then even if such misrepresentations were not contained in the mailing or wire, actionable mail and/or wire fraud have occurred if the defendant acts with knowledge that the use of the mail or wire is reasonably foreseeable in connection with the scheme to defraud. *Pereira*, 347 U.S. at 1; *Martino*, 648 F.2d at 401.[7] In fact, the mailing or wire may even be incidental to the scheme to defraud. *Dana Corp.*, 900 F.2d at 886, *citing*, *Schmuck v.*

7. As previously discussed, violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *Tarnonol*, 561 F.2d at 471–473.

United States, 109 S. Ct. at 1447. In any event, Plaintiffs have presented evidence at trial of repeated misrepresentations made by both of the Defendants to the Plaintiffs, orally (in person and over the telephone), and in writing (sent by telefax and through the mail as well),[8] all of which Plaintiffs reasonably relied upon.

More that sufficient evidence has been adduced at trial to establish a factual issue as to Plaintiffs' reasonable reliance upon Defendants' fraudulent misrepresentations and omissions as evidenced by Stipulation of Facts 35, 52–55, 68–69, 73–77, 82–86 set out in Exhibit 973. In fact, Morganroth and Jeffrey Morganroth testified that Plaintiffs provided and continued to provide legal services to Defendants in reliance upon the following: (i) through January 1993, Defendants repeatedly confirmed and certified specific amounts due and owing to Plaintiffs and made repeated promises to pay such amounts in full; (ii) DeLorean reviewed time sheets on a number of occasions and continually certified specific amounts owing to Plaintiffs and promised payment of such amounts in full; (iii) Plaintiffs requested payment orally and sent written invoices for payment to Defendants, none of which were objected to or questioned in any way; (iv) on each occasion which Plaintiffs requested payment and/or sent written invoices, Defendants promised full payment; (v) Plaintiffs also regularly received from Defendants, through the mail, Logan's audited financial statements which reflected the amount owing by Logan to

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8. Although Defendants erroneously contend that Plaintiffs have presented no evidence in support of the Attorney Schemes, more than sufficient evidence to create a factual issue for jury determination has been produced at trial in support of the Attorney Schemes, including, but not limited to, the Morganroth Scheme, as previously discussed on pages 14–23 herein.

Plaintiffs and which were certified under oath by DeLorean as being true and accurate; (vi) Plaintiffs also received from Defendants a copy by telefax and mail of the Lakevue Funding Commitment executed by DeLorean in late 1990 which represented that Plaintiffs were owed $2.2 million and were to be paid $350,000 on account at that time; (vii) Plaintiffs also received from DeLorean by telefax and mail a copy of a letter sent by DeLorean to the American Arbitration Association in late 1990 that represented that he personally owed Plaintiffs $2.2 million at that time and Plaintiffs were forced to pay his expenses as well; (viii) Plaintiffs were present on several occasions in 1990 and 1991 when DeLorean and Beeley confirmed in sworn testimony under oath that Defendants owed Plaintiffs millions in legal fees; (ix) Plaintiffs received partial payments from Defendants from time to time which Plaintiffs thought evidenced Defendants' good faith, (x) through January 1993, Defendants repeatedly expressed gratitude and extreme satisfaction regarding legal services performed by Plaintiffs; (xi) through January 1993, Defendants repeatedly stated that Morganroth was the best lawyer in the country and had saved DeLorean's life and Defendants' assets; (xii) through January 1993, Defendants referred clients to Plaintiffs; (xiii) Morganroth was present on several occasions in 1990 and 1991 when DeLorean testified under oath as to the extreme competency of Morganroth; and (xiv) through January 1993, Defendants repeatedly represented that they did not have available funds to satisfy the outstanding fees but would do so as soon as assets became available or unrestrained.

Although Defendants imply that Plaintiffs should have known that Defendants were defrauding Plaintiffs, such contention is contrary to the evidence that DeLorean and Logan *intentionally attempted to hide* their true intention from

Plaintiffs. Not only did Morganroth and Kimmerly testify that Defendants intentionally omitted to disclose pertinent facts and misstated or fabricated events during the entire period of legal representation, but DeLorean *admitted that he hid* Defendants' true intent from Plaintiffs for at least 2½ years after secretly retaining Freidberg to sue Plaintiffs because the time was not right. DeLorean even admitted that Defendants intentionally hid their true intent not to pay Plaintiffs the large unpaid balance even after retaining Freidberg to sue Plaintiffs since Defendants wanted Plaintiffs to continue to provide legal services to Defendants, which Defendants knew would not continue if Plaintiffs were aware of Defendants' true intent. Furthermore, Defendants stipulated in Stipulation of Facts 53–55 contained in Exhibit 973 that at all times Plaintiffs rendered legal services to Defendants, they did so with the *intention and expectation* of receiving full compensation. In fact, Morganroth testified that had he known that Defendants had been receiving millions of dollars at the time that Defendants had been representing that they could not presently satisfy their outstanding legal fees or that Freidberg had been secretly retained to sue Morganroth 2½ years earlier while Morganroth performed substantial legal services to Defendants based upon Defendants' repeated representations of payment, or that Freidberg received approximately $1.3 million from Defendants during such 2½ year period while Defendants were representing to Plaintiffs that they could not presently satisfy any legal fees because they had no access to funds, or that Defendants had withheld pertinent information and misrepresented the true facts regarding matters such as the service of process issue in the DSQ Enforcement action, or had Plaintiffs known the true facts regarding other attorney schemes then Plaintiffs certainly would not have continued to provide legal services. Morganroth's testimony makes clear that all of Defendants' fraudulent statements and omissions were discovered after February 2, 1993 when Defendants instituted their New York action, including, but not

limited to, the fact that Freidberg had been secretly retained 2½ years earlier and had been paid in excess of $1.3 million. Defendants further disingenuously contend that the existence of the other Attorney Schemes should have put Plaintiffs on notice. But the evidence adduced at trial reveals that the Morganroth, Kimmerly, and Weinberg Schemes were not consummated until February 2, 1993; that Morganroth was unaware of the existence of the other Attorney Schemes, such as the McConnell, Weitzman, and Berger Schemes until he commenced investigation after February 2, 1993; and that Defendants had provided Morganroth with false facts and omissions regarding Simon, which Morganroth only discovered during his investigation after February 2, 1993 as well.

D. *More than sufficient evidence has been adduced to establish injury to business or property by reason of violation of 18 U.S.C. § 1962.*

Defendants' argument on this point is premised upon a misstatement or misapplication of the law.

It is well established that § 1964(c) authorizes a private suit by "any person injured in his business or property by reason of a violation of § 1962." *See*, 18 U.S.C. § 1964(c); *Sedima*, 473 U.S. at 495. In construing said section of the RICO statute, the United States Supreme Court specifically rejected the concept that "racketeering injury" separate from the injury caused by the predicate acts is necessary to maintain a RICO private suit. *Id.*[9]

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9. The Supreme Court in *Sedima*, 473 U.S. at 497 held:

> Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by the predicate acts sufficiently related to constitute a

(Cont'd)

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Virtually all of the circuits have followed the mandate of Sedima in construing this provision of the RICO statute. *See, Brandenburg v. Seidel,* 859 F.2d 1179, 1187 (4th Cir. 1988); *Nodine v. Textron, Inc.*, 819 F.2d 347, 348 (1st Cir. 1987); *Corwin v. Marney, Orton Invest.*, 788 F.2d 1063, 1069 (5th Cir; 1986); *Haroco Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985). However, the Sixth Circuit, as well as some other courts, have made clear that no "racketeering injury" separate from the harm caused by the predicate acts is necessary to maintain a *§ 1962(c)* claim, but that unlike *§ 1962(c)*, a plaintiff must demonstrate injury stemming directly from the defendant's alleged use or investment of illegally obtained income in connection with a *§ 1962(a)* claim. *Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 494 (6th Cir. 1990).

Defendants, nevertheless, incorrectly contend that a separate "racketeering injury" is required with respect to all of the substantive RICO sections. But whether one applies *Sedima* to all of the RICO claims here, or adopts the Sixth Circuit's view as to the § 1962(a) claim, the record readily reveals more than sufficient evidence to create a factual issue as to whether Plaintiffs suffered injury to business or property by "reason" of a violation § 1962, as this Honorable Court held in its February 28, 1974 Order.

(Cont'd)

> pattern, for the essence of the violation is the commission of those acts in connection with the conduct of the enterprise. Those acts are, when committed in the circumstances delineated in § 1962(c), an activity which RICO was designed to deter. Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts.

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It is abundantly clear that the evidence in the case at bar more than sufficiently satisfies the dictates of *Sedima*. The testimony of Morganroth and Jeffrey Morganroth indicates that Plaintiffs have suffered the loss of in excess of $5.4 million and their law practice also has suffered the loss of clients, resources, and additional income by reason of Defendants' §1962 violations. In fact, the evidence even satisfies the erroneous standard suggested by Defendants, since the injury to Plaintiffs, business and property was caused by DeLorean's and Logan's acquisition or maintenance of an interest in the enterprise, and operation and management of the enterprise as shown below.

It is also abundantly clear that the evidence more than sufficiently satisfies the dictates of *Craighead* with respect to the § 1962(a) claim since Defendants used and invested income derived from racketeering activity to establish and operate the s:am on Morganroth. *Newmyer,* 888 F.2d at 397. The evidence demonstrates that the Plaintiffs have suffered injuries to business and property stemming directly from DeLorean's and Logan's use or investment of their illegally obtained income.

DeLorean and Logan received approximately $8.9 million from the DRLP Scheme, additional significant amounts from the DMCL Scheme, and, at a minimum, $10.2 million from the Attorney Schemes. Furthermore, DeLorean and Logan attempted to obtain income from the Eureka Scheme, from the Gorman Scheme, and from the Simon Scheme. As the testimony of DeLorean makes clear, a significant portion of the income derived from the DRLP and DMLC Schemes was used to pay the establishment of the enterprise and its operating expenses in carrying out said schemes, including, but not limited to, $500,000 in fees to wash the funds. Moreover, the testimony of DeLorean and Beeley confirms that a significant portion of

the income derived from the DRLP Scheme was used to satisfy the acquisition loan borrowed to purchase the assets of Logan. DeLorean, Beeley, and Schade further testified that a liquid Logan then reinvested $100,000 of such income into the enterprise to be used as the earnest money deposit in furtherance of the Gorman Scheme. In addition, the testimony of DeLorean and Beeley indicates that Logan used such wrongfully derived income to make partial payments on behalf of the members of the enterprise to attorneys in order to string them along. Logan also used the wrongfully derived income to pay Nesseth for services he rendered on behalf of the enterprise, as confirmed by the testimony of DeLorean and Beeley. Furthermore, the testimony of DeLorean reveals that the income which was to be derived from the Eureka Scheme was intended to be used to purchase DMC out of bankruptcy so as to enable the members of the enterprise to resume other schemes to defraud and to prevent the discovery of the schemes already implemented. DeLorean and Beeley's testimony further confirms that DeLorean and Logan used income derived from the Weitzman, Kimmerly, and McConnell Schemes to make partial payments to Morganroth in an effort to string Morganroth along. In reliance on the partial payments, Morganroth continued to provide legal services to DeLorean and Logan, as testified to by Morganroth and Jeffrey Morganroth. In reliance on partial payments received from Cristina Corporation, Cristina Holdings Corporation, DeLorean and Logan, other attorneys such as Kimmerly continued to provide legal services to members of the enterprise, as confirmed by Kimmerly in his testimony. In addition, the testimony of DeLorean and Beeley further reveals that DeLorean and Logan also used such wrongfully derived income to secretly retain Freidberg in 1990 and pay him approximately $1.3 million to institute a sham action against Morganroth in order to avoid payment, and to consummate the

Weinberg Scheme. Freidberg was retained in 1990 with wrongfully derived income that should have been paid to Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth. The sham malpractice action was not filed until Morganroth had resolved certain of DeLorean's and Logan's legal troubles approximately 2½ years later, so that DeLorean and Logan could receive the additional benefits of Morganroth's services without payment. Finally, some of the partial payments to attorneys and the substantial monies paid to Freidberg to perfect the Morganroth Scheme were financed through the DRLP Scheme as evidenced by DeLorean's testimony. DeLorean testified that monies became available to Logan after Logan's acquisition loan was satisfied through the income wrongfully derived from the DRLP Scheme. DeLorean further testified that Logan funneled monies to DeLorean through the Cristina Note, which was executed as part of the DRLP Scheme.

II. THIS HONORABLE COURT ALREADY HAS DETERMINED THAT AS A MATTER OF LAW, PLAINTIFFS *DO NOT* LACK STANDING TO RECOVER FOR DEFENDANTS' RICO VIOLATIONS.

This Honorable Court already rejected, in its February 28, 1994 Order, Defendants' identical contention that Plaintiffs lack standing to pursue a RICO claim against their former clients. After the precise issue was fully briefed and argued by the parties, this Honorable Court ruled that the *Canon* cases and other cases cited by the Defendants such as *Richardson*, *T.C. Theater Corp.*, and *Emile Industries, Inc.* were inapposite to the case at hand, that the motion had to be denied for the reasons briefed and argued by Plaintiffs, and that the Defendants essentially were impermissibly asking to be granted immunity for alleged wrongdoings perpetrated against their attorneys

simply because Plaintiffs were once Defendants' attorneys. *See*, February 28, 1994 Tr. at 29. This Honorable Court further indicated that Defendants had the right to object to the admission of any evidence at trial on the basis of privilege and if such privilege in fact applied then the evidence would be excluded. *Id.* Nevertheless, Defendants disregard and ignore this Honorable Court's definitive ruling and Order on the identical issue simply on the grounds that somehow it is now appropriate to revisit an issue even though the decision was made as a matter of law. Plaintiffs respectfully suggest that the issue should not be re-opened since no grounds exist for reconsidering this Honorable Court's ruling and Order on a matter of law; however, Plaintiffs refer to and hereby incorporate by reference Section I at pages 19–34 of Plaintiffs' Combined Brief in Opposition to Motion for Partial Summary Judgment Against Count I and Motion for Judgment on the Pleading Against Counts I and II ("Plaintiffs' Combined Brief") filed on February 14, 1994, rather than repeat the arguments and law previously set forth in response to the issues. Plaintiffs summarize below the argument and law discussed in detail therein.

Defendants again contend that Plaintiffs' RICO claim should be dismissed because it purportedly violates well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients. The argument founders on two separate grounds.

First, even after cross-examining Morganroth for 19 trial days, deposing Morganroth for five full days, cross-examining Jeffrey Morganroth, and after collecting thousands of pages of documents from Plaintiffs, Defendants did not identify at trial nor do they do so now *any* "confidences" or "secrets" that

have been or may be revealed by Plaintiffs in the course of pursuing the RICO claim.[10] Defendants address this subject in an entirely generalized and bald conclusion that "Plaintiffs' case is replete with documents obtained during the course of representation of Defendants and extracted from Plaintiffs' files. . . ." Defendants fail to even specify how any of these documents are either confidential or secret or discuss the substance of any of such documents. Defendants apparently believe that the entire subject matter of Defendants' repeated and well-documented frauds was somehow magically transformed into "confidences" and "secrets" merely because there was an attorney-client relationship between Plaintiffs and Defendants when some of Defendants' fraudulent conduct occurred. But that is not the law. The attorney-client privilege protects only confidential "*communications*" between an attorney and a client, not the facts underlying those communications. *Humphreys Hutcheson & Moseley v. Donovan*, 755 F.2d 1211, 1219 (6th Cir. 1985). *Accord*, *United States v. Cunningham*, 672 F.2d 1064, 1073, n.8 (2nd Cir. 1982), *cert den.*, 466 U.S. 951 (1984). Thus, merely funneling documents past counsel will not shield the documents from disclosure. *Sneider v. Kimberly-Clark Corp.*, 91 F.R.D. 1, 4 (N.D. Ill. 1980). Moreover, the privilege does not extend to "information and statements obtained by an attorney from public documents or from third persons." 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 2017 at 137 (1970) (footnote omitted). Similarly,

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10. Defendants have the burden of establishing that Plaintiffs are properly utilizing confidential material to prosecute their RICO claim. *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980) (party claiming privilege has burden of establishing its applicability to the particular circumstances); *FTC v. Lukens Steel Co.*, 444 F.Supp. 803, 806 (D.D.C. 1977) ("The party seeking the benefit of the privilege has the burden of demonstrating its applicability.").

"secrets," as it is used in the Code, refers only to detrimental or embarrassing information regarding the client "gained in the professional relationship." MRPC 1.6(a). Contrary to Defendants' unsubstantiated accusation, the evidence used at trial to support Plaintiffs' RICO claim is either a matter of public record or was acquired through investigation after February 2, 1993 or discovery in this action, after the termination of the attorney-client relationship between Plaintiffs and Defendants, as testified to by Morganroth. In fact, this Honorable Court made clear that if any privileged information was attempted to be introduced at trial, Defendants' right to object and exclude such evidence was preserved.[11] Accordingly, any such privileged evidence either was excluded commensurate with the procedure established by this Honorable Court in its ruling and Order, or the privilege or objection was waived by non-assertion.

Plaintiffs' proofs in support of their RICO claim did not consist of Defendants' "confidences" or "secrets," but the live testimony of Kimmerly, Weitzman, Shaler, Morganroth, Jeffrey Morganroth, and Keating,[12] the introduction of deposition

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11. Defendants refer to three Exhibits as somehow being privileged — Exhibits 5, 14 and 66 — but Defendants did not object to their introduction when offered into evidence, nor are any of such exhibits privileged. Exhibit 5 is a telefax sent to Plaintiffs which evidences Defendants' use of the wires in connection with the Morganroth Scheme, and Exhibits 14 and 66 are documents that Kimmerly previously testified to at the behest of Defendants and/or without objection.

12. Defendants disingenuously contend that Plaintiffs have not introduced any live testimony in support of the RICO claim. But six live witnesses in fact so testified. Plaintiffs also attempted to call DeLorean as a seventh live witness through subpoena, but DeLorean refused to honor the subpoena and refuse to appear.

testimony obtained during discovery in this action of DeLorean, Beeley, Mitchell, Thomopolous, Rapetti, Schade, and Weinberg, the admission of documents acquired through investigation after February 2, 1993 and during discovery in this action, and the Stipulation of Facts agreed to by the parties as set out in Exhibit 973. By way of example, perhaps some of the most telling evidence in support of the RICO claim is a document from *opposing* counsel Freidberg's files, produced after this litigation began. That December 1990 retention agreement between DeLorean and Freidberg, as well as the testimony surrounding it, shows that throughout the period in which Defendants repeatedly promised to pay Morganroth, thereby inducing Morganroth to keep working, Defendants had secretly retained Freidberg to bring a malpractice case against Plaintiffs, and had no intention of paying Morganroth. In short, Plaintiffs have had no need to and have not relied on "confidences" or "secrets" to support their claims, nor have Defendants objected to the introduction of testimony or exhibits at trial, on such grounds, pursuant to the procedure established by this Honorable Court.

Second, and equally fatal to Defendants' thesis, this is a case in which DeLorean and Logan contend — originally as affirmative claims in New York and here[13] and now by way of defense and set off — that Morganroth and his firm committed malpractice. The law is well-settled that in such circumstances the client waives the attorney-client privilege and the attorney

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13. Defendants brought affirmative malpractice claims against Plaintiffs in New York state court even before this Michigan action was filed and then as counterclaims in this action. Although these affirmative malpractice claims have now been dismissed on statute of limitation grounds in both forums, Defendants have continued to use the same allegations of malpractice, as well as other new allegations not pled, as a defense and potential setoff in this action.

is *permitted* to use confidences and secrets necessary to prosecute claims for fees and to defend themselves against the charges of malpractice. MRPC 1.6(C)(5) *See also, Tasby v. United States*, 504 F.2d 332, 336 (8th Cir. 1974), *cert den.*, 419 U.S. 1125 (1975).[14] In this instance, any supposed "confidences" and "secrets" that would be used to prove RICO violations are equally germane to the fee claim itself and to the defense of the malpractice allegations as fully discussed on pages 31–33 of Plaintiffs' Combined Brief. In addition, the fact that Defendants repeatedly failed to pay not only Morganroth's but other attorneys' legal fees would be admissible even in the absence of RICO claims under Fed. R. Civ. P. 404(b), which provides that evidence of "other acts" is admissible to show a common plan or intent. *See, e.g., United States v. Ellzey*, 874 F.2d 324, 329 (6th Cir. 1989); *United States v. Ausmus*, 74 F.2d 722, 727–728 (6th Cir. 1985). We know of no case — and Defendants cite none — holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as RICO, as well.

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14. Even apart from Defendants' waiver of privilege by bringing malpractice claims, Defendants have also waived the privilege through their conduct of the litigation. They actually *asked direct questions* of Morganroth which they knew would elicit the very communications that they now claim are somehow privileged. Clearly, such questions on behalf of DeLorean and Logan would waive the attorney-client privilege if it were even applicable. *Cf., Drimmer v. Appeston*, 628 F. Supp. 1249, 1251 (S.D.N.Y. 1986) (privilege waived because client allowed attorney to testify to contents of confidential communication).

Appendix N

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request this Honorable Court deny the instant Motion.

Respectfully submitted,

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